

NATIONAL MARINE SANCTUARIES PROGRAM
AUTHORIZATION ACT OF 1988

JUNE 28, 1988.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 4208]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4208) to authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Marine Sanctuaries Program Authorization Act of 1988".

TITLE I—NATIONAL MARINE SANCTUARIES PROGRAM
AUTHORIZATION AND AMENDMENTS

SEC. 101. DEFINITION OF ACT.

For purposes of this title, the term "Act" means title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431-1439).

SEC. 102. SANCTUARY DESIGNATION PROCEDURE AMENDMENTS.

(a) NOTICE OF DESIGNATION.—Section 304(b)(1) of the Act (16 U.S.C. 1434(b)(1)) is amended to read as follows:

"(1) NOTICE OF DESIGNATION.—(A) Subject to subparagraph (B), not later than 120 days after the last day of the period specified in subsection (a)(6), the Secretary shall—

"(i) publish in the Federal Register—

"(I) notice of the designation of a national marine sanctuary, with final regulations to implement the designation, and any other matters required by law; and

"(II) notice of the availability to the public of the final management plan and final environmental impact statement relating to such sanctuary; and

"(ii) submit such notice of designation to the Congress; unless the Secretary determines, based upon the Congressional report described in subsection (a)(6), comments upon the draft environmental impact statement, or other relevant information, not to proceed with the designation.

"(B) The Secretary may publish and submit a notice of designation in accordance with subparagraph (A) not later than 150 days after the last day of the period specified in subsection (a)(6) if—

"(i) the Secretary determines that additional time is required for analysis of and response to public comments relating to such designation; and

"(ii) the Secretary notifies the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

"(C) A determination of the Secretary not to proceed with the designation of a national marine sanctuary—

"(i) shall be made in writing, setting forth in detail the basis for the Secretary's decision; and

"(ii) shall be submitted to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate.

"(D) The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published."

(b) **TAKING EFFECT OF DESIGNATION.**—Section 304(b) of the Act (16 U.S.C. 1434(b)) is amended by adding at the end the following:

"(5) **TAKING EFFECT OF DESIGNATION.**—The designation of a national marine sanctuary (including terms of the designation which are not disapproved under this subsection) and regulations implementing such designation shall take effect after a period of 45 days of continuous session of Congress beginning on the day on which such notice is published pursuant to paragraph (1), unless—

"(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

"(B) in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor of the State certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms, as applicable, shall not take effect in the area of the sanctuary lying within the seaward boundary of the State."

(c) **CONFORMING AMENDMENT.**—Section 304(b)(2) of the Act is amended—

(1) by striking "paragraph (1) (A) or (B)" and inserting "paragraph (5) (A) or (B)";

(2) by striking "paragraph (1)(A)" the second place it appears and inserting "paragraph 5(A)"; and

(3) by striking "paragraph (1)(B)" and inserting "paragraph (5)(B)".

SEC. 103. PROMOTION AND COORDINATION OF RESEARCH; SPECIAL USE PERMITS; USE OF DONATIONS.

The Act is amended—

(1) by striking section 308;

(2) by redesignating section 309 as section 308; and

(3) by adding at the end the following:

"SEC. 308. PROMOTION AND COORDINATION OF RESEARCH.

"The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

"(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

"(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research."

"SEC. 310. SPECIAL USE PERMITS.

"(a) **ISSUANCE OF PERMITS.**—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

- "(1) to establish conditions of access to and use of any sanctuary resource; or
- "(2) to promote public use and understanding of a sanctuary resource.

"(b) **PERMIT TERMS.**—A permit issued under this section—

"(1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

"(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

"(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

"(4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

"(c) **FEES.**—

"(1) **ASSESSMENT AND COLLECTION.**—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

"(2) **AMOUNT.**—The amount of a fee under this subsection shall be equal to the sum of—

"(A) costs incurred by the Secretary in issuing the permit;

"(B) costs incurred by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

"(C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.

"(3) **USE OF FEES.**—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

"(A) for issuing and administering permits under this section; and

"(B) for expenses of designating and managing national marine sanctuaries.

"(d) **VIOLATIONS.**—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

"(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

"(2) assess a civil penalty in accordance with section 307; or

"(3) both.

"(e) **REPORTS.**—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

"(f) **FISHING.**—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

"(g) **REPORT.**—The Secretary of Commerce shall submit an annual report to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate which describes activities of the Secretary in implementing this section. The Secretary shall submit the first report under this subsection not later than 12 months after the date of the enactment of this section.

"SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

"(a) **COOPERATIVE AGREEMENTS.**—The Secretary may enter into cooperative agreements with any nonprofit organization—

"(1) to aid and promote interpretive, historical, scientific, and educational activities; and

"(2) for the solicitation of private donations for the support of such activities.

"(b) **DONATIONS.**—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title."

SEC. 104. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) **LIABILITY FOR DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.**—The Act is amended by adding at the end the following:

"SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

"(a) LIABILITY.—

"(1) IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

"(2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

"(3) DEFENSES.—A person is not liable under this subsection if—

"(A) that person can establish by a preponderance of the evidence that the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and that the person acted with due care;

"(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

"(C) the destruction, loss, or injury was of a de minimus nature.

"(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—

"(1) RESPONSE ACTIONS.—The Secretary may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

"(2) DAMAGE ASSESSMENT.—The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

"(c) CIVIL ACTIONS.—

"(1) RECOVERY OF RESPONSE COSTS AND DAMAGES.—The Secretary, acting as trustee for sanctuary resources on behalf of the United States, shall commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) for response costs and damages.

"(2) VENUE.—Venue for an action under this section lies—

"(A) in any district in which the defendant resides or may be found;

"(B) in any district in which is located the defendant's principal place of business;

"(C) in the district nearest to the national marine sanctuary; and

"(D) in the case of an in rem action, in any district having jurisdiction over the vessel.

"(d) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section and civil penalties under section 307 shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

"(1) RESPONSE COSTS AND DAMAGE ASSESSMENTS.—Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

"(2) RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

"(A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

"(B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

"(C) to manage and improve any other national marine sanctuary.

"(3) USE OF CIVIL PENALTIES.—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraphs (2)(B) and (C) of this subsection.

"(4) FEDERAL-STATE COORDINATION.—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with an agreement entered into by the Secretary and the Governor of that State."

(b) DAMAGES, RESPONSE COSTS AND SANCTUARY RESOURCE DEFINED.—Section 302 of the Act (16 U.S.C. 1432) is amended—

(1) by striking "and" at the end of the paragraph (4);

(2) by striking the period in paragraph (5) and inserting "; and"; and

(3) by adding at the end the following:

"(6) 'damages' includes—

"(A) compensation for—

"(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

"(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

"(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

"(B) the cost of damage assessments under section 312(b)(2);

"(7) 'response costs' means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss or injury; and

"(8) 'sanctuary resource' means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary."

(c) **EFFECTIVE DATE.**—Amounts in the form of damages received by the United States after November 30, 1986, for destruction or loss of, or injury to, a sanctuary resource (as that term is defined in section 302(8) of the Act (as amended by this Act)) shall be subject to section 312 of the Act (as amended by this Act).

SEC. 105. ACTIONS WITH RESPECT TO NEW SANCTUARIES.

(a) **ISSUANCE OF NOTICE OF DESIGNATION.**—The Secretary of Commerce shall issue a notice of designation under section 304(b)(1) of the Act (16 U.S.C. 1434(b)(1))—

(1) with respect to the proposed Cordell Banks National Marine Sanctuary as generally described in the Federal Register notice of June 30, 1983, not later than December 31, 1988;

(2) with respect to the Flower Garden Banks National Marine Sanctuary as generally described in the Federal Register notice of August 2, 1984, not later than March 1, 1989;

(3) with respect to the Monterey Bay National Marine Sanctuary as generally described in the Federal Register notice of December 31, 1979, not later than December 31, 1989; and

(4) with respect to the Western Washington Outer Coast National Marine Sanctuary as generally described in the Federal Register notice of August 4, 1983, not later than June 30, 1990.

(b) **SUBMISSION OF PROSPECTUSES.**—The Secretary of Commerce shall submit a prospectus under section 304(a)(1)(C) of the Act (16 U.S.C. 1434(a)(1)(C)) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate with respect to the Northern Puget Sound National Marine Sanctuary, as generally described as the Washington State Nearshore area in the Federal Register notice of August 4, 1983, not later than March 31, 1991.

SEC. 106. STUDY OF AREAS FOR DESIGNATION AS OR INCLUSION IN NATIONAL MARINE SANCTUARIES.

(a) **STUDY.**—

(1) **IN GENERAL.**—The Secretary shall conduct a study of the areas described in subsection (c) for purposes of making determinations and findings in accordance with section 303(a) of the Act (16 U.S.C. 1433(a))—

(A) regarding whether or not all or any part of such areas are appropriate for designation as national marine sanctuaries in accordance with title III of the Act; and

(B) regarding whether or not all or any part of the areas described in subsections (c) (1), (2), and (3) should be added to and administered as part of the Key Largo National Marine Sanctuary or the Looe Key National Marine Sanctuary.

(2) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report to the Congress which sets forth the determinations and findings referred to in paragraph (1).

(b) **DESIGNATION OR EXPANSION OF MARINE SANCTUARIES.**—If a result of a study conducted pursuant to subsection (a) the Secretary makes the determinations and findings set forth in section 303(a) of the Act (16 U.S.C. 1433(a)) with respect to all or any part of the areas described in subsection (c), the Secretary, in accordance with the procedures for the designation of national marine sanctuaries set forth in section 304 of the Act (16 U.S.C. 1434)—

(1) shall designate such areas or parts of such areas as national marine sanctuaries; or

(2) shall, with respect to all or any part of the areas described in subsections (c)(1), (2), and (3), add such areas or parts of such areas to the Key Largo National Marine Sanctuary or the Looe Key National Marine Sanctuary; as the Secretary considers appropriate.

(c) AREAS DESCRIBED.—The areas referred to in subsections (a) and (b) are the following:

(1) AMERICAN SHOAL.—The portion of the marine environment in the Florida Keys in the vicinity of American Shoal, including the part of such environment located generally between such shoal and the Marquesas Keys.

(2) SOMBRERO KEY.—The portion of the marine environment in the Florida Keys in the vicinity of and surrounding Sombrero Key.

(3) ALLIGATOR REEF.—The portion of the marine environment in the Florida Keys in the vicinity of and surrounding Alligator Reef, including the portion located generally between such reef and the Key Largo National Marine Sanctuary.

(4) SANTA MONICA BAY.—The portion of the marine environment off the coast of California commonly referred to as Santa Monica Bay, consisting of an area described as Santa Monica Bay, consisting of an area described generally as follows: Beginning at the point known as Point Dume near the western extent of Santa Monica Bay, proceed generally southeast along the shoreline to the point known as Point Vicente near the southern extent of Santa Monica Bay; then west to the 900 meter bathymetric contour; then generally northwest along the 900 meter bathymetric contour to a point due west of Point Dume; then east to Point Dume at the point of beginning.

(d) DEFINITIONS.—For the purposes of this section—

(1) MARINE ENVIRONMENT.—The term "marine environment" has the meaning such term has in section 302(3) of the Act (16 U.S.C. 1432(b)).

(2) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

SEC. 107. ENFORCEMENT AMENDMENTS.

Section 307 of the Act (16 U.S.C. 1437) is amended to read as follows:

"SEC. 307. ENFORCEMENT.

"(a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.

"(b) POWERS OF AUTHORIZED OFFICERS.—Any person who is authorized to enforce this title may—

"(1) with or without a warrant or other process—

"(A) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and an equipment, stores, and cargo of such vessel;

"(B) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;

"(C) seize any evidence of a violation of this title or of any regulation or permit issued under this title;

"(2) execute any warrant or other process issued by any court of competent jurisdiction; and

"(3) exercise any other lawful authority.

"(c) CIVIL PENALTIES.—

"(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

"(2) NOTICE.—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

"(3) IN REM JURISDICTION.—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction.

"(4) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order and simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. Upon being served such a complaint, the Secretary shall promptly file in such court in accordance with section 2112 of title 28, United States Code, a certified copy of the record upon which the viola-

tion relating to such complaint was found or such penalty imposed. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

"(5) **COLLECTION OF PENALTIES.**—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

"(6) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

"(d) **FORFEITURE.**—

"(1) **IN GENERAL.**—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection.

"(2) **APPLICATION OF THE CUSTOMS LAWS.**—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

"(3) **DISPOSAL OF SANCTUARY RESOURCES.**—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

"(4) **PRESUMPTION.**—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title of a regulation or permit issued under this title.

"(e) **PAYMENT OF STORAGE CARE AND OTHER COSTS.**—

"(1) **IN GENERAL.**—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

"(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

"(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or of any regulation or permit issued under this title.

"(2) **LIABILITY FOR COSTS.**—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

"(f) **SUBPOENAS.**—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order may be punished by such court as contempt.

"(g) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of this title and regulations and permits issued under this title, and to grant such other relief as may be appropriate.

"(h) USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

"(i) COAST GUARD AUTHORITY NOT LIMITED.—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

"(j) INJUNCTIVE RELIEF.—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 312, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require."

SEC. 108. AUTHORIZATION OF APPROPRIATIONS; U.S.S. MONITOR ARTIFACTS AND MATERIALS.

The Act is amended by adding at the end of the following:

"SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary to carry out this title the following:

"(1) GENERAL ADMINISTRATION.—For general administration of this title—

- "(A) \$1,800,000 for fiscal year 1989;
- "(B) \$1,900,000 for fiscal year 1990;
- "(C) \$2,000,000 for fiscal year 1991; and
- "(D) \$2,100,000 for fiscal year 1992.

"(2) MANAGEMENT OF SANCTUARIES.—For management of national marine sanctuaries designated under this title—

- "(A) \$2,000,000 for fiscal year 1989;
- "(B) \$2,500,000 for fiscal year 1990;
- "(C) \$3,000,000 for fiscal year 1991; and
- "(D) \$3,250,000 for fiscal year 1992.

"(3) SITE REVIEW AND ANALYSIS.—For review and analysis of sites for designation under this title as national marine sanctuaries—

- "(A) \$450,000 for fiscal year 1989;
- "(B) \$500,000 for fiscal year 1990;
- "(C) \$550,000 for fiscal year 1991; and
- "(D) \$600,000 for fiscal year 1992.

"SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS.

"(a) CONGRESSIONAL POLICY.—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

"(b) INTERPRETATION AND DISPLAY OF ARTIFACTS.—

"(1) SUBMISSION OF PLAN.—The Secretary shall, within six months after the date of the enactment of this section, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

"(2) CONTENTS OF PLAN.—The plan submitted under subsection (a) shall, at a minimum, contain—

"(A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;

"(B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;

"(C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and

"(D) a draft cooperative agreement with the State of North Carolina to implement the plan.

"(c) **DISCLAIMER.**—This section shall not affect the following:

"(1) **RESPONSIBILITIES OF SECRETARY.**—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

"(2) **AUTHORITY OF SECRETARY.**—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1)."

SEC. 109. CHANNEL ISLANDS NATIONAL MARINE SANCTUARY PROTECTION.

(a) **REPORT.**—The Secretary of Transportation, not later than 6 months after the date of the enactment of this Act, shall transmit to Congress—

(1) the provisions of international conventions and United States laws and regulations which reduce the risk of a vessel collision or incident resulting in damage to the environment in the Channel Islands National Marine Sanctuary;

(2) the provisions of the National Contingency Plan for removal of oil and hazardous substances prepared under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) which enable the Secretary to effectively respond to an oil pollution incident in or affecting the Channel Islands National Marine Sanctuary;

(3) a list of pollution exercises conducted under that National Contingency Plan in the Santa Barbara Channel before the date of the enactment of this Act, and a schedule of pollution exercises scheduled to be conducted under that plan in that channel during the 12 months following the date of the enactment of this Act; and

(4) a report on the establishment—

(A) under the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) of safety fairways off the coast of California and

(B) of the Long Beach NAVTEX in Long Beach, California.

(b) **STUDY REVIEW AND REPORT.**—The Secretary of Transportation shall review all Federal, State, and local studies conducted on the hazards of shipping operations and the risks those operations pose to the environment and natural resources of the Channel Islands National Marine Sanctuary, and report to the Congress not later than 6 months after the date of the enactment of this Act on the status and recommendations of each of those studies. The Secretary shall include in the report a recommendation on whether an alternate vessel traffic separation scheme would reduce the risks of shipping operations to the environment and natural resources in the Channel Islands National Marine Sanctuary.

(c) **PROPOSAL OF DESIGNATION OF AREA TO BE AVOIDED.**—The Secretary of Transportation shall prepare and submit a proposal to the International Maritime Organization to designate the portion of the Channel Islands National Marine Sanctuary which is outside of the Santa Barbara Channel Traffic Separation Scheme, as an area to be avoided. The Secretary shall ensure that the proposal would not result in undue interference with international vessel traffic in the Santa Barbara Channel, or with enjoyment of the Channel Islands National Marine Sanctuary under title III of the National Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

SEC. 110. REGULATIONS.

The Secretary of Commerce shall issue regulations implementing the amendments made by this title and the amendments made by the Marine Sanctuaries Amendments of 1984 not later than one year after the date of the enactment of this Act.

TITLE II—LIABILITY FOR DESTRUCTION OR LOSS OF, OR INJURY TO, NATIONAL PARKS SYSTEM RESOURCES

SEC. 201. PARK SYSTEM RESOURCES.

(a) **DEFINITIONS.**—As used in this title—

(1) **DAMAGES.**—The term "damages" includes the following:

(A) **Compensation for—**

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a park system resource; and

(II) the value of the lost use of a park system resource pending its restoration or replacement or the acquisition of an equivalent resource;

or

- (ii) the value of the park system resource in the event the resource cannot be replaced or restored; and
 - (B) the cost of assessments under section (d).
- (2) **RESPONSE COSTS.**—The term "response costs" means the costs of actions taken by the Secretary of the Interior to minimize destruction or loss of or injury to park system resources, or to minimize the imminent risk of such destruction, loss, or injury.
- (3) **PARK SYSTEM RESOURCE.**—The term "park system resource" means any living or nonliving resource that contributes to the conservation, recreational, ecological, historical, or aesthetic value of the National Park System.
- (b) **LIABILITY.**—
 - (1) **IN GENERAL.**—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.
 - (2) **LIABILITY IN REM.**—Any vessel used to destroy, cause the loss of, or injure any park system resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.
 - (3) **DEFENSES.**—A person is not liable under this subsection if—
 - (A) that person can establish by a preponderance of the evidence that the destruction or loss of, or injury to, the park system resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and that the person acted with due care;
 - (B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or
 - (C) the destruction, loss, or injury was of a de minimus nature.
- (c) **CIVIL ACTIONS.**—
 - (1) **RECOVERY OF RESPONSE COSTS AND DAMAGES.**—The Secretary of the Interior, acting as trustee for park system resources on behalf of the United States, shall commence a civil action in the United States district court for the appropriate district against any person who may be liable under subsection (b) for response costs and damages.
 - (2) **VENUE.**—Venue for an action under this section lies—
 - (A) in any district in which the defendant resides or may be found;
 - (B) in any district in which is located the defendant's principal place of business;
 - (C) in any district where the national park is located; and
 - (D) in the case of an in rem action, in any district having jurisdiction over the vessel.
- (d) **RESPONSE ACTIONS AND ASSESSMENT OF DAMAGES.**—
 - (1) **RESPONSE ACTIONS.**—The Secretary of the Interior may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, park system resources, or to minimize the imminent risk of such destruction, loss, or injury.
 - (2) **ASSESSMENT OF DAMAGES.**—The Secretary of the Interior shall assess damages to park system resources.
- (e) **USE OF RECOVERED AMOUNTS.**—Response costs and damages recovered by the Secretary of the Interior under this section shall be retained by the Secretary in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:
 - (1) **RESPONSE COSTS AND DAMAGE ASSESSMENTS.**—Twenty percent of amounts recovered under this section, up to a maximum balance of \$1,000,000, shall be used to finance response costs and damage assessments by the Secretary of the Interior.
 - (2) **RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.**—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—
 - (A) to restore, replace, or acquire the equivalent of park system resources which were the subject of the action;
 - (B) to manage and improve the national park of which such park system resources are a part; and
 - (C) to manage and improve any other unit of the National Park System.

SEC. 202. INJUNCTIVE RELIEF.

If the Secretary of the Interior determines that there is an imminent risk of destruction or loss of or injury to a park system resource, or that there has been actual destruction or loss of or injury to such resource which may give rise to liability under section 201, the Attorney General, upon request of the Secretary of the

Interior, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

TITLE III—ABANDONED SHIPWRECKS LOCATED IN NATIONAL MARINE SANCTUARIES

SEC. 301. MANAGEMENT OF ABANDONED SHIPWRECKS LOCATED IN NATIONAL MARINE SANCTUARIES.

Section 6 of the Abandoned Shipwreck Act of 1987 (43 U.S.C. 2105) is amended by adding at the end the following new subsection:

"(f) **NATIONAL MARINE SANCTUARIES.**—This Act shall not affect the management of abandoned shipwrecks located within the boundaries of any national marine sanctuary established under title III of the Marine Protection Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.)."

PURPOSE OF LEGISLATION

The purpose of H.R. 4208 is to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431-1439) (hereafter referred to as Title III) to:

- (1) reauthorized the National Marine Sanctuary Program for four years, providing for modestly expanded funding based on the additional requirements of the legislation;
- (2) improve the timeliness and predictability of the designation process and to require designation or consideration of specific sites;
- (3) to clarify liability for damages to sanctuary resources and to provide for the exclusive use of damage awards within the National Marine Sanctuary Program;
- (4) to provide for a system of special use permitting within marine sanctuaries; and
- (5) to move toward a uniform enforcement authority under statutes protecting marine resources.

BACKGROUND AND NEED FOR LEGISLATION

A. LEGISLATIVE HISTORY AND CONGRESSIONAL INTENT

The marine sanctuary legislative concept originated in the late 1960's. Several bills were introduced in the 90th and 91st Congresses, but none were reported from the Committee on Merchant Marine and Fisheries. The National Marine Sanctuary Program (NMSP) was established by the 92nd Congress as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532). The NMSP is administered by the National Oceanic and Atmospheric Administration (NOAA), through the Office of Ocean and Coastal Resource Management, Marine and Estuarine Management Division.

Title III provides a broad-based mandate for comprehensive management of special marine areas. The key concept, which this Committee debated and reaffirmed in 1980 and again in 1984, is to protect identified areas and resources by controlling the mix of uses to maintain the recognized values of the site. This concept allows for multiple use of marine sanctuaries, but recognizes that resource protection is the overriding objective. The Committee maintains

that it is both necessary and proper to regulate specific uses to provide such protection.

B. 1980 AND 1984 AMENDMENTS

Early implementation of the NMSP was slow and often controversial. Amendments in 1980 and 1984 were focused on refining the administrative and procedural aspects of the sanctuary designation process, sharpening the purposes and policies underpinning the program, detailing the standards under which NOAA evaluates potential sites, and establishing a formal process for Congressional review of proposals.

Debate during consideration of the 1980 and 1984 amendments frequently centered on the need for and benefits of designating marine sanctuaries. In fact, during consideration of those amendments, legislation was introduced to terminate the program on the grounds that it was largely duplicative of other resource protection programs. The Committee rejected both of these proposals.

During consideration of H.R. 4208 in the 100th Congress, debate has had a markedly distinct flavor. The Committee has considered measures to improve implementation of the program and to speed the process of considering and designating sites. Debate has been free from dissent regarding the need for this program, signaling long overdue consensus on the underlying conceptual foundations.

C. EXISTING SITES

Although the original Act was passed in 1972, the program received no direct appropriation until 1979. Only two sanctuaries had been designated by 1975: the site of the sunken, Civil War iron-clad U.S.S. *Monitor*, and a coral reef structure south of Miami, Florida. By January, 1981, four additional sanctuaries were designated. In 1986, the seventh and last site was added. The total system, therefore, includes seven sites encompassing 2,323.5 square nautical miles (1,969,259 acres). The following is a brief description of each existing site.

The U.S.S. *Monitor* National Marine Sanctuary was designated in January, 1975, and is an area one mile in diameter southeast of Cape Hatteras, North Carolina. It protects the wreck of the famous Civil War iron-clad, the U.S.S. *Monitor*.

The Key Largo National Marine Sanctuary was designated in December, 1975. It provides protective management of a 100 square mile coral reef area south of Miami, Florida.

The largest of the sanctuaries, Channel Islands National Marine Sanctuary, was designated in September, 1979, and comprises an area of 1,252 square nautical miles surrounding the northern Channel Islands and Santa Barbara Island off the coast of southern California. The area supports one of the largest and most varied assemblages of marine mammals in the world.

The Looe Key National Marine Sanctuary was designated in January, 1981. It consists of a five square nautical mile submerged section of the Florida reef tract southwest of Big Pine Key. The site includes a beautiful "spur and groove" coral formation supporting a diverse marine community and a wide variety of human uses.

The Gray's Reef National Marine Sanctuary was designated in January, 1981. It is a submerged live-bottom area located on the south Atlantic continental shelf due east of Sapelo Island, Georgia. It is one of the largest, nearshore hard-bottom reefs in the south Atlantic and supports a diverse array of temperate and tropical species, including algae, coral, sponges, shellfish, tropical ornamental reef fish, and a variety of gamefish. Sea turtles and marine mammals, primarily dolphins, are frequently seen in the area. The sanctuary encompasses about 17 square nautical miles.

The Gulf of the Farallones National Marine Sanctuary was designated in January, 1981, and encompasses a 948 square nautical mile area off the California coast north of San Francisco. The waters off Point Reyes and around the Farallon Islands are characterized by the significant seabird and marine mammal populations that thrive there. The Farallon Islands support the largest seabird rookeries in the contiguous United States. Whales, including several endangered species, and porpoises pass through the sanctuary on their annual migrations.

The Fagatele Bay National Marine Sanctuary was designated in August, 1986. It protects a 163 acre reef tract adjacent to Tutuila Island, American Samoa. The site contains deep-water coral terrace formations that are unique to Pacific islands of volcanic origin. In 1986, the area was severely blighted by an infestation of crown-of-thorns starfish which graze on coral. NOAA is participating in studies to monitor the natural recovery of the reef.

D. CURRENT ISSUES

Sluggish implementation.—While the Committee has reached a welcome consensus on the overall value of this program, testimony during the 100th Congress has demonstrated that program implementation has been unacceptably slow. As shown in the previous discussion, since enactment of the 1984 amendments on October 19, 1984, only one new site covering 163 acres has been designated. Other sites are languishing within NOAA, with no clear indication when critical decisions will be made.

The proposed Cordell Bank National Marine Sanctuary is an underwater island located 20 miles due west of Point Reyes and just north of the existing Gulf of the Farallones National Marine Sanctuary. It is a highly productive area biologically and is the northernmost seamount along the west coast. It was nominated for designation in July, 1981, and in June, 1983, NOAA placed the site on the list of active candidates. On August 28, 1987, NOAA published notice of a proposed designation in the Federal Register and submitted a designation prospectus to Congress. However, no further action has been taken on this site to date.

The proposed Flower Garden Banks National Marine Sanctuary would protect the East and West Flower Garden Banks in the Gulf of Mexico, approximately 115 miles southeast of Galveston, Texas. The banks support the northernmost coral reefs on the continental shelf of North America. The principal threat to this area has been careless anchoring by commercial freighters, and damage to the reefs as a result of this activity is well documented. This area was announced as an active candidate in August, 1983. Although it was

suggested that the site could be protected by a coral management plan developed by the Gulf of Mexico Regional Fishery Management Council, no such plan has been developed and the Council now supports designation. In addition, despite some earlier reservations, the State Department has agreed that regulation of anchoring by foreign vessels can be accomplished consistently with conventional and customary international law.

The proposed Monterey Bay National Marine Sanctuary would protect the largest submarine canyon on the North American continental shelf. The area is nutrient rich and attracts an abundance of marine mammals and seabirds. In 1977, Monterey Bay was one of three sites initially selected for consideration. Despite strong public and state governmental support, consideration was suspended by NOAA in December 1983, without any opportunity for public comment.

A glance at NOAA's Site Evaluation List (SEL) provides further evidence of programmatic atrophy. Of the 29 sites placed on the SEL in 1983, NOAA has not completed consideration of a single site. Only one DEL site, Flower Garden Banks, is currently under review.

The Committee received testimony documenting the need to consider and designate additional sites from the SEL and identifying several sites for priority consideration.

The proposed Washington Outer Coast National Marine Sanctuary is adjacent to the Olympic National Park, one of the least developed shores in North America. The site provides an important haulout area for seals and sea lions and breeding areas for marine birds. It also provides habitat for varied, commercially important species of fish and shellfish. Testimony from the Center for Environmental Education identified this site as one of very high quality and urged priority consideration for its designation as a national marine sanctuary.

The proposed Northern Puget Sound National Marine Sanctuary was also identified by the Center for Environmental Education as a site deserving priority consideration. This site would protect the exceptionally productive waters surrounding the San Juan Islands in northern Puget Sound, Washington. This nearshore area supports a great diversity of species, including marine mammals, birds, commercially important populations of fish, and endangered species such as the bald eagle. Three pods of killer whales are known to reside in this area and have been studied longer than any other group of whales.

In addition, the Committee notes that both the Western Washington Outer Coast area and the Northern Puget Sound area have been on NOAA's Site Evaluation List since its publication in the Federal Register in August, 1983.

The Committee considers the Administration's record of considering and designating new sites over the past four years unacceptable. The reason for this lack of substantial progress is twofold: first, the President has not recommended and Congress has not provided adequate funding to support the necessary research, surveys and staffing levels; and second, there has been an evident lack of administrative will within NOAA to complete the designation process.

H.R. 4208 addresses both of these issues. It provides expanded authorization levels and requires that annual budget submissions be subdivided among program functions such that oversight of program funding and the sanctuary designation process will be easier. The bill also sets forth specific timetables to govern consideration and designation of potential sites. Therefore, NOAA will be required to comply with specific statutory milestones in considering sites.

Damages to Sanctuary Resources.—The objective of designating a marine sanctuary is to provide protection to specified resources of national significance. Thus, the focus of management efforts is generally to control the mix of uses to ensure that sanctuary resources are not damaged by human activity. However, in some cases significant damages to sanctuary resources have occurred as a result of human activity.

In the morning of August 4, 1984, the 400-foot, Cypriot-registered freighter M/V *Wellwood* ran aground on Molasses Reef in the Key Largo National Marine Sanctuary. Molasses Reef is very popular for divers, snorkelers, and sport fishermen, and the grounding and removal of the ship caused extensive damage to the reef. At the request of the Department of Commerce, the U.S. Justice Department filed a \$22 million civil action against the owner and operator of the *Wellwood*, including: \$18.75 million in natural resource damages; \$2.1 million in civil penalties; \$650,000 for NOAA research and monitoring costs; and \$500,000 for U.S. Coast Guard salvage costs.

In January, 1986, the suit was settled for \$6.275 million. The settlement award will be spread in annual payments over fifteen years. Initial payments will be used to reimburse the Coast Guard with remaining sums going to the U.S. Treasury. Due to the lack of statutory authority, none of the settlement payments are available for restoration of damages or reimbursement of NOAA response costs. In fact, under current law, all sums recovered under the authority of Title III are to be deposited directly into the General Treasury of the United States.

The M/V *Wellwood* is not an isolated example. On March 13, 1987, a settlement was reached in the case of the M/V *Puerto Rican*, an oil tanker which sank within the general area of the Gulf of the Farallones National Marine Sanctuary. The settlement of \$1.7 million included \$618,416 for damages to sanctuary resources and NOAA response costs. Again, due to lack of statutory authority, these funds have not been received by NOAA.

On the basis of the experience in these cases, it is clear that additional statutory authority is necessary to ensure that awards for damages to sanctuary resources and for NOAA response costs are made available to the agency. Such authority will help ensure rapid response to, and effective restoration of, past and future damages.

H.R. 4208 addresses this issue by adding a new Section 312 to Title III entitled "Liability for Destruction or Loss of, or injury to, Sanctuary Resources." This section clarifies liability, provides authority for the Secretary to retain and expend awards for damages and response costs, and captures damage awards made after November 30, 1986.

Special use permits.—Since 1975, when the first two national marine sanctuaries were established offshore North Carolina (U.S.S. *Monitor*) and Florida (Key Largo), the primary objective of the NMSP has been to protect nationally significant resources within specific areas of the marine and Great Lakes environment. Simultaneously, NOAA has implemented a policy of promoting multiple uses of designated areas whenever compatible with resource protection. These general concepts were reaffirmed and sharpened in 1984 when the statute was substantially restructured. Nonetheless, questions of when, to what extent, and under what conditions, public and private uses of sanctuary resources are appropriate have presented a continually difficult issue for sanctuary managers.

Congress has granted the Secretary of Commerce, in Section 304(a)(1) of the 1984 amendments to Title III, broad authority to regulate all uses of sanctuary resources. Section 301(b)(5) of the 1984 amendments also establishes an NMSP policy:

* * * to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

Pursuant to Sections 301 and 304 of Title III (and subject to certain restrictions contained in section 304(c) concerning existing rights prior to a designation), the Secretary may prohibit, authorize, and regulate any public or private use of sanctuary resources. Unfortunately, NOAA has not yet issued final regulations implementing the 1984 amendments to Title III, and existing regulations authorize permits only for research, education, and salvage activities.

Rapid growth of commercial and public use activities in several sanctuaries has further complicated this already difficult management issue. Moreover, program managers recently received an unprecedented proposal for commercial use of the Key Largo National Marine Sanctuary.

In 1984, an effort to solicit private funds for the renovation of the Carysfort Reef Lighthouse was begun. The Carysfort Lighthouse, within the sanctuary boundaries, is owned and operated by the U.S. Coast Guard and is on the National Register of Historic Places. Nonprofit support for the renovation was sought to improve the lighthouse, making it suitable for use in promoting public education and handicapped access to the the sanctuary.

In May, 1986, NOAA received a proposal from Carysfort Restoration Incorporated (CRI) to renovate the Carysfort Lighthouse in conjunction with a seven-room undersea lodge; the lighthouse would be available for public use and interpretation and provide support for the lodge including a control room, and power and air supply. CRI representatives argued that it would not be economically feasible to renovate and maintain the lighthouse for public use without a profit-making operation such as a hotel to provide stable financial support.

In November, 1987, NOAA declined to authorize the proposal, citing limited educational benefits, potential damage to sanctuary

resources and insufficient statutory authority to enter into concession-type arrangements with commercial enterprises.

An effort was made to provide blanket authorization for concession activities in the context of the fiscal year 1988 continuing resolution. This effort was forestalled in favor of considering the question more completely during reauthorization of the statute.

Key Largo is by no means the only example. In other instances, substantial commercial or public uses have developed around sanctuary resources, including recreational diving, whale watching, and boat tours. In certain of these instances, more stringent oversight and management may be appropriate to protect sensitive or threatened resources or to promote public access and understanding more effectively. This could be fostered by more explicit statutory authority governing regulations of uses of sanctuary resources. To ensure more effective promotion and regulation of public and private uses, the Committee has provided the Secretary discretionary authority to require special use permits governing uses of sanctuary resources.

Uniform enforcement.—Title III grants broad authority to NOAA to conduct “necessary and reasonable” enforcement activities. However, it does not explicitly contain many of the specific authorities of other resource statutes enforced by NOAA, such as the Magnuson Fishery Conservation and Management Act (MFCMA), the Marine Mammal Protection Act and the Lacey Act Amendments of 1981.

The Committee was urged to amend the existing Title III enforcement provisions to establish a more uniform enforcement authority under statutes protecting living resources in the U.S. Exclusive Economic Zone (EEZ) and Great Lakes. The most detailed enforcement provisions contained in a resource protection statute administered by NOAA are found in the MFCMA, under which over 10 years of enforcement experience has been gleaned primarily from the agency’s enforcement of fishing activities within our nation’s EEZ. These provisions and this enforcement experience have provided the basis for changes to Title III. The Committee bill rewrites the existing enforcement section to provide the suggested uniformity.

COMMITTEE ACTION

On March 21, 1988, Congressman Mike Lowry, with five original cosponsors, introduced H.R. 4208, reauthorizing Title III. The bill would reauthorize the NMSP through 1992 at amounts escalating from \$3 million in 1989 to \$4.5 million in 1992. The bill was referred to the Merchant Marine and Fisheries Committee, and within the Committee to the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

On April 19, 1988, the Subcommittees met in joint session to take testimony on the reauthorization of the NMSP, whose funding authority expires at the end of fiscal year 1988. Witnesses at the hearing included Congressmen Lagomarsino, Fascell, and Alexander, the National Park Service, representatives of the environmental community, and academia.

The Subcommittees first met to mark up the bill on May 19, 1988, but were adjourned under a point of order regarding permission to sit under the five-minute rule. The Subcommittees reconvened on May 24, 1988, and reported out a substantially expanded bill, based on a substitute amendment offered by Congressman Lowry. The substitute amplified enforcement powers; established a deadline for the decision to designate areas as national marine sanctuaries; directed the designation of Cordell Bank, Monterey Bay, and Western Washington Outer Coast as national marine sanctuaries; required prospectuses to be submitted for Flower Garden Banks and Puget Sound; authorized special use permits; and increased authorization levels. Also adopted unanimously by the Subcommittees was Congressman Gerry Studds' amendment establishing a cause of action for damages to sanctuary resources, and authorizing the use of the funds recovered to restore harmed or damaged resources and manage national marine sanctuaries. The Studds amendment also extended this authority to the National Park System.

The Full Merchant Marine and Fisheries Committee met June 8, 1988, to mark up H.R. 4208. Congressman Lowry offered a largely technical amendment which passed with further amendment by Congressman Robert Davis. Congressman Lowry also offered a substantive amendment which clarified that the areas identified on the Site Evaluation List were only to be used as a general guide for the sanctuaries required to be designated under section 105 of the bill, and that the precise boundaries for these sanctuaries would be established as part of the designation process. This process would include an examination of the range of the resources being protected as part of the sanctuary, as well as public review and comment, including comments of the affected state's Governor and Congress. Congressman Davis also offered an amendment to further protect the Channel Islands National Marine Sanctuary off the coast of Santa Barbara, California, by requiring studies of additional protection schemes by the U.S. Coast Guard, as well as a compendium of existing protection regimes and activities. This amendment passed by voice vote. Also passed by voice vote was Chairman Walter Jones' amendment requiring that a suitable display of artifacts and materials from the U.S.S. *Monitor* National Marine Sanctuary off the North Carolina coast, be displayed in North Carolina, and Congressman Solomon Ortiz' amendment to include Flower Garden Banks on the list of sites to be designated as a national marine sanctuary.

Congressman Norman Shumway offered a series of amendments to the bill. The first would have removed Santa Monica Bay as an area to be studied for possible future designation as a national marine sanctuary. This amendment was defeated. Mr. Shumway's second amendment would have deleted Monterey Bay, Western Washington Outer Coast, and Flower Garden Banks from the list of areas to be designated as national marine sanctuaries, but included these sites on the list for prospectuses. This amendment also did not pass. However, Mr. Shumway's third amendment, to clarify that abandoned shipwrecks in national marine sanctuaries within state waters are still subject to the management authority of the

Federal Government despite passage of the Abandoned Shipwreck Act (Public Law 100-298), was adopted by voice vote.

No other amendments were offered, and H.R. 4208 was ordered reported by the Full Committee by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 101. DEFINITION OF ACT

This section indicates that all references in the bill to the term "Act" are references to Title III of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1431-1439).

SECTION 102. SANCTUARY DESIGNATION PROCEDURE AMENDMENTS

This section amends the designation process established in the 1984 amendments to Title III (Public Law 98-498). The Committee intends that these changes will speed the designation of new sites and add predictability to the NMSP, which has been a serious problem with the program's development to date. Subsection (a) first requires the Secretary to publish a notice of designation (or a notice why designation is not necessary), together with final regulations, within 120 days after the close of the first 45-day period for Congressional review of a proposed sanctuary. This notice must also be communicated to the Congress. The deadline may be extended an additional 30 days if the Secretary determines that additional time is needed for analysis or response to public comments.

Existing law contains no deadline. By adopting this provision, the Committee intends to avoid situations similar to that experienced with regard to the Cordell Bank proposal. On August 28, 1987, NOAA issues a prospectus and the Congressional review period has expired, but the agency has not moved forward with the proposal. This new requirement will force action, providing greater predictability and accountability in the designation process.

This subsection also mandates that decisions not to proceed with the designation of an area as a national marine sanctuary must be made in writing and submitted to the relevant House and Senate Committees.

Subsection (A) also establishes a requirement that NOAA publish a notice of designation within 30 months of the date on which a site is elevated as an "Active Candidate" from the Site Evaluation List. Alternatively, NOAA must publish findings detailing the reasons why notice of designation has not been issued. Such reasons could include the need for additional public hearings, agency or state consultations, and additional site evaluation. This provision responds to the situation presented in the case of the proposed Flower Garden Banks site. Originally proposed in 1977, this site has been under virtually continuous review to date. The new provision will prevent such a delay in the future by requiring notice of designation within 30 months of elevation to Active Candidate status, or a specific explanation of the reasons for any delay.

Subsection (b) reinstates designation provisions in the original Act which were stricken by the addition of subsection (a).

Subsection (c) corrects cross-references necessitated by subsection (b).

**SECTION 103. PROMOTION AND COORDINATION OF RESEARCH; SPECIAL
USE PERMITS; USE OF DONATIONS**

Section 103 amends Title III by striking the current section 308, by redesignating the current section 309 as 308, and by adding at the end new sections 309, 310, and 311, regarding promotion and coordination of research, special use permits, and cooperative agreements and donations.

A. Section 309. Promotion and coordination of research

Section 309 requires NOAA to promote and coordinate the use of national marine sanctuaries for research purposes. This requirement extends to NOAA's actual conduct or support of marine research within marine sanctuaries. It also requests that NOAA give priority to this research, and actively consult with other Federal and State agencies to promote the use of marine sanctuaries for marine research.

The Committee believes that national marine sanctuaries provide ideal areas for conducting long-term marine research projects, and that they should be used for such projects because of the nationally significant resources within them, and the ability to manage the area and the ecosystem contained within the sanctuary as a unit.

B. Section 310. Special use permits

This part also adds a new section 310, entitled "Special Use Permits." This section confers upon the Secretary the authority to issue special use permits to authorize the conduct of specific activities with a national marine sanctuary. Prior to issuing a special permit, NOAA must determine that a permit is necessary in order to (1) establish conditions of access to and use of any sanctuary resource; or (2) to promote public use and understanding of a particular sanctuary resource.

Subsection (b) of this section specifies the terms under which a permit may be issued. These terms shall require that the activity is compatible with the purposes for which the sanctuary was originally designated and with the protection of sanctuary resources; a maximum duration of the permit of no more than 5 years unless renewed by the Secretary; that activities carried out under the permit not result in any destruction, loss, or injury to sanctuary resources; that the permittee purchase and maintain general liability insurance against any claims arising from activities authorized by the permit; and that the permittee agree to hold the United States harmless from any liability claims which might arise.

Subsection (c) establishes a method under which the Secretary may assess and collect fees for any activities carried out under a special use permit authorized by this section.

Subsection (c)(2) specifies that the total fee to be levied on the permittee would include the sum of: (1) all costs incurred by the Secretary in issuing the permit; (2) all costs incurred by the Secretary as a result of the activity, including monitoring; and (3) an amount which represents the fair market value of the use of the particular sanctuary resource and a reasonable return to the Government.

Subsection (c)(3) specifies that the Secretary may use any fees collected under this subsection for issuing and administering special use permits, and for any expenses associated with designating and managing marine sanctuaries. The Committee intends that sums collected pursuant to this section be treated as offsetting collections and receipts of NOAA.

Subsection (d) specifies that the Secretary may suspend or revoke the permit without compensation to the permittee and without liability to the United States, assess a civil penalty in accordance with section 307 of Title III, or both, if a term or condition of the permit is violated by the permittee.

Subsection (e) requires that each permittee submit an annual report to the Secretary not later than December 31 of each year which describes the activities conducted under that permit and any revenues derived from those activities during that year.

Subsection (f) specifies that nothing in section 310 shall be considered to require any individual to obtain a special use permit as authorization for the conduct of any fishing activities within a national marine sanctuary. The Committee recognizes that NOAA's regulation of fishing activities will continue to be conducted pursuant to section 304(a)(5) of title III, and that such site-specific regulation is neither amended nor affected by enactment of this section.

Subsection (g) requires the Secretary of Commerce to submit an annual report to both the relevant House and Senate Committees which describes the Secretary's implementation of section 310. The first report would be required not later than 12 months from the date of enactment of the Act.

The special use permitting system established by this section is intended to provide a mechanism for controlling activities which cannot adequately be controlled under sanctuary regulations. Issuance of a permit under this section will not require a regulatory revision under section 304(a)(4), and thus, this process will provide a more responsive management tool. The provisions added by this section are intended to complement and not to supplant existing regulations and permitting procedures, such as those which may exist for research, education and salvage.

C. Section 311. Cooperative agreements and donations

Section 311, entitled "Cooperative Agreements and Donations," provides the Secretary of Commerce with explicit authority to enter into cooperative agreements and to accept donations. Subsection (a) authorizes the Secretary to enter into cooperative agreements with any nonprofit organization to aid and promote certain sanctuary activities, and to allow a nonprofit organization to raise private contributions for the support of these activities. This provision confirms that the Secretary may authorize a nonprofit organization to assist the Secretary in the promotion of national marine sanctuaries and to solicit, with private money, private donations for the support of such activities. Under subsection (b), the Secretary is also authorized to accept donations of funds, property, and services for use in designating and administering national marine sanctuaries. This authority is not limited to donations provided by cooperating organizations, and includes the inherent authority to expend those donations on sanctuary purposes.

**SECTION 104. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY
RESOURCES**

Section 104 of the bill contains new provisions intended to establish explicitly a regime for restoring resources of a national marine sanctuary that are destroyed, injured or otherwise lost. The regime is modeled largely after similar liability regimes under the Federal Water Pollution Control Act and the Comprehensive Environmental Response, Compensation and Liability Act. Where, however, there may arise inconsistencies between the provisions of those liability systems and the provisions of this new Act, these provisions shall control.

Subsection (a) adds a new section 312, which comprises several subsections. Section 312(a) sets out the basic rule in paragraph (1) that anyone who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury. This includes vessel owners. Paragraph (2) states that vessels that damage, destroy or cause of the loss of sanctuary resources will be liable in rem to the United States for similar costs and damages.

Paragraph (3), however, provides defenses to the general statement of liability contained in paragraph (1). Subparagraph (A) states that a person shall not be liable if that person can establish that the destruction, loss or injury was caused solely by an act of God, war, or an act or omission of a third party. To invoke the defense, the person must also show that the action was conducted with due care.

The second defense, contained in subparagraph (B), provides that no liability shall lie if the person can show that the destruction, loss or injury was caused by an activity authorized by federal or state law. The Committee intends, by this defense, to preserve a simple sense of fairness for those who have been given permission explicitly by federal or state authorities to undertake an activity which causes the damage. Where such permission is granted—most usually in the form of a license or permit—it would be unfair to impose liability upon the person where that person was acting in full compliance with the terms and conditions of the permit or licence.

For example, where a point source discharger is licensed under the Clean Water Act to discharge certain pollutants, and those pollutants resulting in damage to sanctuary resources, then no liability would attach provided, of course, that the discharger was in full compliance with applicable discharge requirements.

This defense is intended to be construed narrowly, and the authorization giving rise to the defense must be for the specific activity giving rise to the damage. Thus, where vessel runs aground within a sanctuary, it cannot use this provision to assert that the license to operate within the territorial waters of the United States entitles it to a defense because the authority to operate within territorial waters does not constitute the authority to run aground in a marine sanctuary.

Subparagraph (C) contains the third defense to liability, stating that destruction, loss or injury of a de minimus nature will not give rise to liability under this section. This subparagraph, which

the Committee also intends to be construed narrowly, reflects a common sense approach that full legal liability should not attach where the injury is so slight so as to be irrelevant, where the costs of the response and restoration actions do not approach the magnitude of the harm to the sanctuary resource, and where imposing liability would serve no purpose whatsoever.

Subsection (b) authorizes the Secretary of Commerce to undertake all necessary actions to minimize the risk of imminent harm to sanctuary resources or—if harm is occurring—to minimize that harm. The Secretary may undertake these response actions directly through the use of federal personnel or through the use of the injunctive authority under section 307(f).

Subsection (c) directs the Secretary to pursue civil actions against those persons who may be liable under section 312 to recover response costs and damages. The Committee intends that where a person has undertaken an activity that has necessitated a response action or that has caused damages, then the Secretary shall commence an action under this section unless, in the opinion of the Secretary, one or more of the defenses outlined in paragraph (3) clearly applies.

The authority to recover response costs and damages under this section—cost recovery—is intended to complement the injunctive authority in section 104 of this Act, which authorized the Secretary to compel the culpable party to undertake the response or appropriate remedial action directly. Both serve the same function of minimizing damage to sanctuary resources, in the first place, and remedying the damage that does occur.

Subsection (c) also specifies the venue for a civil action under this section.

Subsection (d) governs how the recovered funds are to be used. First, the subsection provides that the Secretary shall retain the funds in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA). That section requires that funds recovered pursuant to a cost-recovery action under CERCLA be set aside in a separate account and used without further appropriation to remedy the damaged resources and, in certain circumstances, to finance other sanctuary management activities. It is the Committee's intent that this same procedure govern the use of funds recovered under section 312.

The Committee notes that section 107(f)(1) of CERCLA also contains other provisions relating to recovery of damages for resources under the jurisdiction of state trustees, which are not relevant to section 104 of this Act. The Committee does not intend by this reference to incorporate these other non-germane provisions of section 107(f)(1) into the requirements of section 104 of this Act.

Subsection (d)(1) provides a set-aside of up to \$750,000 for use by the Secretary, without further appropriation, to finance response actions and damage assessments by the Secretary. After an initial deposit of funds from a cost recovery action, this set-aside is to be maintained at a level of no more than \$750,000 by subsequent deposits of funds recovered in damage actions so that a constant source of funds is immediately available for response actions and damage assessments.

One serious limitation on the cost-recovery approach to liability is the inability of the Secretary to finance the assessments of damages out of base program funds, since those funds are typically dedicated for other purposes that would have to be postponed if the money is diverted to damage assessments. Without the assessments, however, there may be, as a practical matter, no recovery since the damage assessments provide the technical foundations for recovery actions. To avoid this problem, the bill authorizes the use of a portion of the recovered funds to finance up front subsequent responses and damage assessments.

Subsection (d)(2) details the use of the remaining funds that are recovered pursuant to a cost-recovery action. Since the fundamental purpose of section 104 of this Act is to restore the natural resources of a marine sanctuary that are destroyed, injured or otherwise lost, the first priority for the use of the funds is to restore, replace or acquire the equivalent of the damaged resources.

Where, however, the entire amount of the funds remaining after the operation of paragraph (1) cannot be used to restore or replace the damaged sanctuary resources, then paragraph (2)(B) authorizes the Secretary to use the funds for managing and improving the sanctuary that was the subject of the action and then, as a third option, to manage other priority sanctuaries in need of additional funding.

Paragraph (3) requires the use of amounts recovered from civil penalties in accordance with the requirements of section 107 of this Act (relating to the temporary storage and care of seized property and the payment of rewards) and in accordance with the provisions of paragraph (2) (B) and (C) of this subsection.

Paragraph (4) provides for gubernatorial cooperation in using funds for the recovery of sanctuary resources within the jurisdiction of a state.

Subsection 312(b) amends the "Definitions" section of title III to include several new terms that are used in section 104 of this Act. The first defines the term "damages" to include both the costs of compensation and the costs of damage assessments. Compensation itself reflects the basic measure of damages that is to operate under section 104 of this Act and is drawn from Congressional intent in enacting CERCLA. Since the fundamental purpose of the liability regime is to restore damaged resources, the basic measure of damages is the cost of restoration or replacement or the acquisition of equivalent resources. Where this replacement, restoration or acquisition is not technically feasible, or where costs are grossly disproportionate to the value of the resources, then the Secretary is directed to use the value of the resources as the measure of damages. Under the first measure of compensation, the cost of restoration, the Secretary may also recover the lost-use value of the resource pending its restoration.

Subsection (b) also defines the term "response costs" to include the costs of actions taken by the Secretary to minimize the damage to sanctuary resources or to minimize imminent risks of damage.

Finally, subsection (b) defines the term "sanctuary resources" to include any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or esthetic value of a sanctuary.

Subsection (c) provides that funds received by the United States after November 30, 1986, for damage to sanctuary resources is subject to section 104 of this Act. The Committee intends that the term "received" be construed to refer to the time when a payment is actually received, not when the legal obligation to make the payment first arose. Therefore, under this Act, payments made by the defendants in the *M/V Wellwood* and *M/V Puerto Rican* cases would be used, for example, to restore, replace, or acquire the equivalent of the damaged sanctuary resources.

SECTION 105. ACTIONS WITH RESPECT TO NEW SANCTUARIES

Section 105 establishes a specific schedule for the designation of four new sanctuaries and the submission of a prospectus for one new national marine sanctuary. The Committee established this specific schedule for the designation process for these sanctuaries because of (1) the Committee's concern about the pace of the designation process, especially for Cordell Banks and Flower Garden Banks, which have been in the process of being designated for some period of time; and (2) because of the nationally significant characteristics and merits of these and other areas as excellent prospects for national marine sanctuaries including Monterey Bay, Western Washington Outer Coast, and Northern Puget Sound.

Section 105(a) mandates the Secretary of Commerce to issue a notice of final designation under section 304(b)(1) of title III with respect to the areas described generally in various Federal Register notices according to the following schedule:

- (1) Cordell Banks not later than December 31, 1988;
- (2) Flower Garden Banks not later than March 31, 1989;
- (3) Monterey Bay not later than December 31, 1989; and
- (4) Western Washington Outer Coast not later than June 30, 1990.

It is the Committee's intent that with regard to the above generally described areas, the sanctuary designation process begin in a timely fashion to meet the specific target dates for publication of final notice of designation. It is the Committee's understanding that these schedules are achievable, and that, for example, with respect to the proposed Cordell Banks National Marine Sanctuary, the Administration intends to publish the notice of final designation prior to December 31, 1988.

With respect to the Flower Garden Banks National Marine Sanctuary, the Committee is concerned that this designation process has been underway for over 10 years and is yet to be completed. In recent years, the practice of anchoring on or near the proposed sanctuary, which is over 100 miles offshore of Texas and Louisiana, has caused considerable damage to its coral resources. The Committee is pleased to learn that NOAA and the State Department have now reached an understanding with respect to NOAA's authority to prohibit harmful anchoring of foreign flag vessels within the proposed Flower Garden Banks National Marine Sanctuary. The Committee believes that NOAA's exercise of this authority is fully consistent with conventional and customary international law, including the 1958 Geneva Convention on the Continental Shelf, the Exclusive Economic Zone (EEZ) provisions of the 1982 United Na-

tions Convention on the Law of the Sea, and this nation's traditional port state authority. Therefore, the Committee believes that the deadline of March 31, 1989, for the final designation for Flower Garden Banks National Marine Sanctuary is reasonable and achievable.

In the case of Monterey Bay, this area includes the largest underwater canyon on the North American coast, which, in fact, is far larger than the Grand Canyon. The area also provides unusual nearshore habitat for a variety of flora and fauna, including several endangered and threatened species, which are otherwise found in deep ocean waters many miles from the coast. Monterey Bay also supports a thriving commercial fishing industry and other recreational industries which are dependent on the Bay, such as restaurants, recreational fishing, boating, and tourism.

Previously, Monterey Bay was an active candidate for sanctuary designation from 1978 through 1983, until NOAA abruptly removed it from the active candidate list for reasons which have not convinced many Committee Members. First, NOAA argued that the existence of two other sanctuaries in California already protected similar resources and largely duplicated the purpose of designating a new federal sanctuary; second, because of the size of Monterey Bay, a significant burden would be placed on NOAA's enforcement resources; and third, there were already a number of conservation programs in place in the area. The majority of the Committee, having examined these arguments, does not consider that they provided a valid basis for removing Monterey Bay from active candidate status.

First, the other California sanctuaries do not include submarine canyons such as found within Monterey Bay and are not accessible to the public to the same extent as is Monterey Bay. Second, the actual size of a sanctuary is only determined by completion of the evaluation process. Thus, NOAA did not know what the actual size of the sanctuary would be at the time it was removed from the candidate list. In fact, it is most likely that the Monterey Bay National Marine Sanctuary, as finally designated, would be considerably smaller than the Gulf of the Farallones National Marine Sanctuary and the Channel Islands National Marine Sanctuary. Third, due to the continuing threats to the health of Monterey Bay from various sources of pollutants, it is questionable whether existing conservation measures are adequate to protect the area. In any case, the need for coordination of resources and management of the area—one of the explicit purposes of the Marine Sanctuaries Program—remains.

Finally, in the case of the Western Washington Outer Coast site, which was originally placed on the Site Evaluation List, and generally described in the Federal Register notice of August 4, 1983, the Committee believes that this area, off the Olympic National Park area of the Washington coast, possesses a unique and nationally significant collection of flora and fauna among its marine resources, and most certainly merits protection and management as a unit, and as a unique ecosystem under marine sanctuary designation. The combination of rocky stacks, sea birds and marine mammal populations alone, plus its adjacency to an already protected landward area, Olympic National Park, merits the designa-

tion of this area as a national marine sanctuary. The Committee believes that the publication of final notice of designation by June 30, 1990, for this site is both a reasonable and achievable deadline.

In general, an important consideration which the Committee studied in establishing these mandatory designations is the process for identification of specific boundaries and areas to be included to adequately protect sanctuary resources. In the end, the Committee deferred to the existing designation process for the establishment of specific boundaries and specific regulations for these legislatively designated national marine sanctuaries. The boundary delineation for these sanctuaries requires technical and scientific judgments about the range of the resources and the specific resources which merit protection under the sanctuary designation. Clearly, a considerable amount of information and scientific data must be evaluated, and consultation with a number of other agencies and the interested public must occur to be able to specify the exact boundaries for these national marine sanctuaries. The Committee expects that NOAA will consult extensively with state agencies, local government officials, marine scientists, and the public, generally, in carrying out the designation process and establishing specific boundaries.

In fact, as part of the hearing record, the Committee was presented with detailed information regarding several of the sites identified in section 105 of the bill. Specifically, the information regarding the Western Washington Outer Coast site suggests that the area described in the Federal Register notice on August 4, 1983, may be inadequate for protecting resources in this area. In particular, the boundaries of this area identified in the SEL may fail to provide an adequate buffer for distinctive rocky stacks that are utilized by the sea bird and marine populations that are integral to the significance of the site. For this site as well as other sites listed in section 105 of this Act, the Committee directs NOAA to use the boundaries listed in the SEL only very generally as a point from which to embark upon a more detailed public review and comment process which will lead to the development of various boundary options, the proposed boundary to be included in the prospectus, and ultimately, the final boundary to be included in the final designation.

Section 105(a), paragraphs (1), (2), and (3) require issuance of designation documents for specific sites as discussed above. Therefore, Congress is directing the Secretary to designate these sites as of a date certain. The Committee fully intends, however, that the designation process outlined in section 304 of title III (as amended by this Act) will be followed, including the necessary site evaluations, submission of a prospectus, Congressional review and public hearings, and compliance with the National Environmental Policy Act.

In addition, the Committee fully intends that passage of the Act does not change the interim status of the site. The site is not a sanctuary until notice of designation has become final pursuant to section 304(b) of title III. Until the designation is final, the status of the site shall remain unchanged.

Section 105(b) requires that the Secretary submit a prospectus under section 304(a)(1)(C) of title III to both the Committee on Merchant Marine and Fisheries and the Committee on Commerce, Sci-

ence, and Transportation with respect to the proposed Northern Puget Sound National Marine Sanctuary by March 31, 1991. The rationale for accelerating consideration of this generally described area is very similar to the rationale for the legislative designation of the other four sanctuaries, except that the precise area to be designated and the specific uses to be regulated will require considerably more consultation with State and local entities prior to the actual designation which, in turn, will require additional time and effort on behalf of NOAA. While the area contains an extremely diverse assemblage of marine resources, including salmon, halibut, groundfish, and other finfish resources, as well as dungeness crab, other crustaceans, marine mammals, and extensive marine bird populations, the area also contains an extensive mix of human uses, including navigation, recreation, tourism, research, and extensive runoff from several highly populated areas. Because of the complexity and the extent of multiple uses of this area, and because of the extensive amount of time which will be required to adequately carry out a sanctuary designation process for this area, the Committee did not require the prospectus to be submitted until March 31, 1991, and left the decision with respect to the appropriateness of a final designation of the Northern Puget Sound National Marine Sanctuary with the Secretary.

SECTION 106. STUDY OF AREAS FOR DESIGNATION AS, OR INCLUSION IN, NATIONAL MARINE SANCTUARIES

Subsection (a) requires the Secretary to conduct a study of four new areas described in subsection (c) to make a determination and finding in accordance with section 303(a) of title III regarding whether all or any part of these areas are appropriate for designation as national marine sanctuaries in accordance with the Act, and whether all or any part of the areas described in subsection (c) (1), (2), and (3) should be added to or administered as part of the existing Key Largo or Looe Key National Marine Sanctuaries. Subsection (a)(2) requires a report to Congress, not later than two years after the date of enactment of the Act, which sets forth the determinations and findings of the study.

Subsection (b) requires that if the Secretary makes the necessary determinations and findings set forth in section 303(a) of title III, with respect to all or any part of the areas described in subsection (c), and determines that all or any part of these areas are appropriate for designation as national marine sanctuaries, either as a new sanctuary or as part of the Key Largo National Marine Sanctuary or the Looe Key National Marine Sanctuary, then the Secretary shall designate these areas, following the procedures for designation set forth in section 304 of title III.

The Committee intends that once the Secretary submits the report to Congress called for in section 106(a)(2) of the bill, if any of the areas or parts of the areas studied under subsection (c) are appropriate for designation as, or as part of, a national marine sanctuary, then the Secretary shall immediately commence the designation process under section 304 of title III.

Subsection (c) specifically describes the areas for study and possible designation or expansion of marine sanctuaries under subsec-

tions (a) and (b) respectively. These area descriptions include the following areas in the Florida Keys:

(1) American Shoal which includes the portion of the marine environment in the general vicinity of American Shoal, including the part of such environment located generally between American Shoal and the Marquesas Keys.

(2) Sombrero Key which includes the portion of the marine environment in the general vicinity of and surrounding Sombrero Key.

(3) Alligator Reef which includes the portion of the marine environment in the general vicinity of and surrounding Alligator Reef, including the portion located generally between Alligator Reef and the Key Largo National Marine Sanctuary.

Subsection (c)(4) describes the area for study within Santa Monica Bay as the portion of the marine environment off the coast of California to include an area described generally as follows: from Point Dume near the western extent of Santa Monica Bay generally southeast along the shoreline to Point Vincente near the southern extent of Santa Monica Bay, then west to the 900-meter bathymetric contour, then generally northwest along the 900-meter bathymetric contour to a point due west of Point Dume, then east to Point Dume.

Subsection (d) defines the term "marine environment" as having the same meaning as the term in section 302(3) of Title III, and defines the term "Secretary" as the Secretary of Commerce.

SECTION 107. ENFORCEMENT

This section amends the existing enforcement authority of Title III contained in section 307 of Title III by further detailing the authorities of the Secretary and the courts with respect to enforcement. The Committee intends that the authorities granted to the Secretary are to be construed as corollaries of the Secretary's general authority to conduct "necessary and reasonable" enforcement activities, and not as limitations on otherwise lawful powers.

Most of the enforcement amendments made to the current enforcement provisions derive from the experiences of NOAA and the Department of Justice (DOJ) in handling over 750 cases under Title III and other marine resource protection laws. The recommendations of NOAA and the Justice Department were considered in developing section 107 of this Act.

The changes made by this section represent a movement toward a uniform enforcement authority for NOAA under statutes protecting living resources in the U.S. Exclusive Economic Zone and Great Lakes. The enforcement provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882) have been used as a model for changes to Title III. By having uniform enforcement standards, the Committee intends to avoid confusion by marine law enforcement agents when enforcing laws such as Title III, the Lacey Act Amendments of 1981, the Marine Mammal Protection Act, and the Endangered Species Act. Standard enforcement provisions should also simplify the work of the federal courts, and reduce disparate treatment of violators.

Subsection (a) states the Secretary's general enforcement authority.

Subsection (b) details the powers of persons authorized to enforce the provisions of the Act. These provisions are similar to those contained in section 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(b)), as well as the Endangered Species Act (16 U.S.C. 1540(e)(3)), and the Marine Mammal Protection Act (16 U.S.C. 1377(d)). The powers granted to authorized officers include warrantless boarding, inspections, searches, and seizures of property suspected of being used to violate the Act, if exercised consistently with the constitutional rights of suspected violators. Subsection (b) also authorizes the seizure of illegally-taken sanctuary resources wherever these resources are located.

Subsection (c) restates the provision in Title III that any person who violates the title, or a regulation or permit issued under it is liable to the United States for a civil penalty of up to \$50,000 per day of a continuing violation. The Committee intends that the term "person" shall include owners of vessels used to violate Title III. In addition, any vessel used to violate Title III is liable in rem for any civil penalty assessed. No penalties may be assessed until notice and an opportunity to be heard is given.

Consistent with section 308 of the Magnuson Act (16 U.S.C. 1858(b)), subsection (c)(4) specifies the terms under which a civil penalty assessment may be reviewed in federal court. Any person against whom a civil penalty is assessed may appeal the assessment within 30 days of the date that the civil penalty becomes final. This provision will give certainty to the appeal process, which currently has no time limit.

The Secretary is also granted authority to request that the Attorney General seek recovery of a final, unappealable penalty. In a penalty recovery action, the validity of the final civil penalty may not be challenged. This is consistent with the Magnuson Act (16 U.S.C. 1858(c)). The Secretary is also given the authority to compromise, modify or remit any penalty assessed under Title III at any time.

Subsection (d) follows the authority found in the Magnuson Act (16 U.S.C. 1860), the Lacey Act Amendments (16 U.S.C. 3374(a)), the Marine Mammal Protection Act (16 U.S.C. 1376(a)), and the Endangered Species Act (16 U.S.C. 1540(e)(4)) in declaring that articles used to violate Title III are subject to forfeiture to the United States. It is the Committee's intent that forfeiture may involve all or any part of a vessel or other item seized for a violation of Title III. The relevant customs laws may be followed for any seizure or forfeiture of property, and any sanctuary resources seized may be sold. Perishable resources may be sold administratively. This will allow perishable sanctuary resources, such as tropical fish, to be disposed of quickly, saving storage and maintenance costs. The proceeds from the sale of sanctuary resources shall stand in their place during subsequent proceedings.

The Act also creates a rebuttable presumption that any sanctuary resources found on board a vessel used to violate Title III have been taken in violation of the title. This provision is similar to one found in the Magnuson Act (16 U.S.C. 1860(e)).

Subsection (e) authorizes the imposition on the violator of storage and maintenance costs for sanctuary resources or other items seized in connection with an enforcement proceeding under Title III pending the outcome of the case. This section also authorizes the use of these costs, civil penalties and forfeitures of property to pay storage costs and rewards for information leading to assessments or forfeitures under Title III. The authority to collect storage costs and to pay rewards is also found in the Magnuson Act (16 U.S.C. 1882(e)), the Lacey Act Amendments of 1981 (16 U.S.C. 3374(c)) and the Endangered Species Act (16 U.S.C. 1540(d)). It is the Committee's intention that rewards paid under Title III are to be reasonable ones, consistent with the gravity of the offense and the relevance of the information to the final outcome of the case. The Committee intends that no officer or employee of the United States, or any State or local government employee, who furnishes information in the course of his or her official duties should be eligible for a reward under this section.

Subsection (f) is a standard provision authorizing the Secretary, in the case of administrative enforcement proceedings, to issue subpoenas and administer oaths. The subsection also specifies the remedies for failure to obey a subpoena and authorizes the payment of fees and mileage to witnesses.

Subsection (g) indicates that federal district courts have jurisdiction over violations of Title III, including violations of permits and regulations issued under the title. The courts are given the authority to grant appropriate relief. The Committee intends that this relief may include the issuance of restraining orders, warrants, process in rem, and other process, and the prescription and acceptance of satisfactory bonds or other security.

Subsection (h) clarifies that the Secretary may enter into agreements with state and federal agencies, on a reimbursable or non-reimbursable basis, for enforcement activities.

Subsection (i) clarifies that the enforcement provisions in section 107 of this Act are not to limit the general authority of the Coast Guard to enforce this law or other laws or the United States under 14 U.S.C. 89.

Section (j) authorizes the Secretary to pursue injunctive relief in federal district court to abate actual harm or the threat of harm to a sanctuary resource. This authority is concurrent with the Secretary's responsibilities to conduct recovery and response actions under Section 104 of this Act.

SECTION 108. AUTHORIZATION OF APPROPRIATIONS; U.S.S. MONITOR ARTIFACTS AND MATERIALS

This section amends Title III by adding a new section 313, entitled "Authorization of Appropriations," and section 314, entitled "U.S.S. Monitor Artifacts and Materials." Section 313 includes authorization of appropriations for fiscal years 1989 through 1992. In contrast to past years, the authorization is divided into three categories which include the following:

- (1) general administration;
- (2) management of sanctuaries; and
- (3) site review and analysis.

The Committee expects that, beginning with the budget submission for fiscal year 1990, the Administration will develop and submit its budget to Congress in accordance with these categories, which will assist the Congress and the Administration in monitoring the pace and expenditures for the NMSP.

"General administration" includes any costs related to NOAA headquarters operations, including salaries, travel, office space, and equipment costs related to the NMSP. Section 108 of this Act authorizes appropriations for general administration of \$1.8 million, \$1.9 million, \$2.0 million, and \$2.1 million for fiscal years 1989 through 1992, respectively.

"Management of sanctuaries" includes any costs related to the on-site operation and management of marine sanctuaries, including on-site staff salaries, office space, equipment costs, research, education, and enforcement. The Committee expects that, through the formation of cooperating associations under section 103 of this Act, appropriations under this section can be supplemented through the acceptance of private donations and contributions and other forms of volunteer assistance. Section 108 of this Act authorizes \$2 million, \$2.5 million, \$3.0 million, and \$3.25 million for fiscal years 1989 through 1992, respectively.

"Site review and analysis" includes any costs related to the consideration of a site for designation as a national marine sanctuary, including the development and printing of supporting documents, public hearings, research, consultation with interested parties, and public education. Section 108 of this Act authorizes \$450,000, \$500,000, \$550,000, and \$600,000 for fiscal years 1989 through 1992, respectively.

Section 108 of this Act also states as Congressional policy the recognition of the historical significance of the wreck of the U.S.S. *Monitor* to coastal North Carolina including the area off the coast of North Carolina known as "the graveyard of the Atlantic." Furthermore, as part of this Congressional policy, section 108 directs the Secretary to maintain permanently a suitable display of artifacts and materials from the U.S.S. *Monitor* at an appropriate site in coastal North Carolina.

Section 108 requires that the Secretary, within 6 months of the date of enactment of this Act submit to the Committee on Merchant Marine and Fisheries a plan for a suitable display in coastal North Carolina of artifacts and materials of the U.S.S. *Monitor*. At a minimum, the plan is required to include (1) an identification of appropriate sites in coastal North Carolina for display of U.S.S. *Monitor* artifacts and materials, and (2) an identification of suitable artifacts and materials for display in coastal North Carolina, including artifacts recovered or proposed for recovery. The plan is also required to include an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the U.S.S. *Monitor*. Finally, the plan is required to include a draft cooperative agreement with the State of North Carolina to implement the plan.

Section 108 of this Act states that this section shall not affect the responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the U.S.S. *Monitor*, nor does it affect the authority of the Secretary to desig-

nate the Mariner's Museum located at Newport News, Virginia, as the principal museum for the display and interpretation of artifacts and materials from the U.S.S. *Monitor*.

The primary purpose of section 108 is to codify an agreement between the Under Secretary of Commerce for Oceans and Atmosphere, Anthony J. Calio, and Congressman Walter B. Jones of North Carolina. This agreement regarded the display and interpretation of artifacts and materials from the U.S.S. *Monitor*, in coastal North Carolina, because of the historical significance of the U.S.S. *Monitor* site to the State.

SECTION 109. CHANNEL ISLANDS NATIONAL MARINE SANCTUARY PROTECTION

Section 109(a) requires that the Secretary of Transportation, no later than 6 months after the date of enactment of this Act, transmit to the Congress the following:

(1) provisions of the International Conventions and U.S. federal laws and regulations which are aimed at reducing the risk of vessel collisions or incidents resulting in damage to the environment in the Channel Islands National Marine Sanctuary;

(2) provisions of the National Contingency Plan for removal of oil and hazardous substances prepared under section 311(c) of the Federal Water Pollution Control Act which enables the Secretary of Transportation to respond to oil pollution incidents in or affecting the Channel Islands National Marine Sanctuary;

(3) a list of pollution clean-up exercises conducted under the National Contingency Plan in the Santa Barbara Channel before the date of enactment of this Act, and a schedule of pollution clean-up exercises scheduled to be conducted under that plan in that channel during the 12 months following the date of enactment of this Act; and

(4) a report on the establishment of safety fairways off the coast of California under the Ports and Waterways Safety Act, and a report on the establishment of the Long Beach NAVTEX in Long Beach, California.

Under subsection 109(b), the Secretary of Transportation is required to review all federal, state, and local studies conducted on the hazards of shipping operations and the risk that these operations pose to the environment and to natural resources of the Channel Islands National Marine Sanctuary. The Secretary is also required to report to Congress not later than six months after the date of enactment of this act on the status and recommendations of each of those studies. As part of that report, the Secretary shall include a recommendation as to whether an alternative vessel traffic separation scheme would result in the reduction of risk which these shipping operations pose to the Channel Islands National Marine Sanctuary.

Finally, subsection 109(c) requires that the Secretary of Transportation prepare and submit a proposal to the International Maritime Organization (IMO) to designate the portion of the Channel Islands National Marine Sanctuary which is outside of the Santa Barbara Channel Traffic Separation Scheme as "an area to be

avoided." The Secretary is also required to ensure that the proposal would not result in undue interference with international vessel traffic in the Santa Barbara Channel, or with the enjoyment of the Channel Islands National Marine Sanctuary, under title III of the National Marine Protection, Research, and Sanctuaries Act of 1972.

SECTION 110. REGULATIONS

Section 110 requires that the Secretary of Commerce issue regulations to implement the amendments made by Title I of this Act not later than one year after the date of enactment of this Act. Also included in this requirement is the issuance of regulations implementing the Marine Sanctuaries amendments of 1984 (P.L. 98-198). These regulations have been under development for over three years, and they should be completed as soon as possible, and if necessary, included with the regulations to implement this Act. Whether combined or done separately, the Committee intends that both sets of regulations be completed not later than one year from the date of enactment of this Act.

TITLE II—LIABILITY FOR DESTRUCTION, LOSS OF, OR INJURY TO NATIONAL PARK SYSTEM RESOURCES

SECTION 201. PARK SYSTEM RESOURCES

Section 201 of this Act is intended to establish explicitly a regime for restoring National Park System resources that are destroyed, injured or otherwise lost. The regime is modeled largely after similar liability regimes under the Federal Water Pollution Control Act and the Comprehensive Environmental Response, Compensation, and Liability Act. However, where inconsistencies between the provisions of those liability systems and the provisions of this act arise, this title shall control. The amendments made by this section affect administration of the National Park System and therefore, fall within the jurisdiction of the Committee on Interior and Insular Affairs.

Subsection 201(a)(1) defines the term "damages," to include both the costs of compensation and the costs of damage assessments. Compensation itself is defined to reflect the basic measure of damages that is to operate under section 201, and is drawn from Congressional intent in enacting CERCLA. Since the fundamental purpose of the liability regime is to restore damaged resources, the basic measure of damages is the cost of restoration or replacement or the acquisition of equivalent resources. Where such replacement, restoration or acquisition is not technically feasible, or where the costs are grossly disproportionate to the value of the resources, then the Secretary is directed to use the value of the resources and the measure of damages. Under the first measure of compensation, the cost of restoration, the Secretary may also recover the lost-use value of the resource pending its restoration. Subsection 201(a)(2) also defines the term "response costs" to include the costs of actions taken by the Secretary of the Interior to minimize damage to park system resources or to minimize imminent risks of damage.

Finally, subsection 201(a)(3) defines the term "park system resource" to include any living or nonliving resource of a national park that contributes to the conservation, recreational, ecological, historical, or aesthetic value of the National Park System.

Section 201(b)(1) sets out the basic rule that anyone who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury. Paragraph (2) states that vessels that damage, destroy or cause the loss of park system resources will be liable in rem.

Paragraph (3) provides defenses to the general statement of liability contained in paragraph (1). Subparagraph (A) states that a person shall not be liable under the subsection if that person can establish that the destruction, loss or injury was caused solely by an act of God, war, or an act or omission of a third party. To invoke the defense, the person must also show that the activity was conducted with due care.

The second defense, contained in subparagraph (B), provides that no liability shall lie if the person can show that the destruction, loss or injury was caused by an activity authorized by federal or state law. The Committee intends by this defense to preserve a simple sense of fairness for those who have been given permission explicitly by federal or state authorities to undertake an activity which causes the damage. Where such permission is granted—most usually in the form of a license or permit—it would be unfair to impose liability upon the person where that person was acting in full compliance with the terms and conditions of the permit or license.

This defense is intended to be construed narrowly, and the authorization giving rise to the defense must be for the specific activity giving rise to the damage. Thus, where a vessel runs aground a reef within a national park, it cannot use this provision to assert that the license to operate within the territorial waters of the United States entitles it to a defense because the authority to operate within territorial waters does not constitute the authority to run aground in the park.

Subparagraph (C) contains the third defense to liability; destruction, loss or injury of a de minimus nature will not give rise to liability under this section. This subparagraph, which the Committee also intends to be construed narrowly, reflects a common sense approach that full legal liability should not attach where the injury is so slight so as to be irrelevant, where the costs of response and restoration actions do not approach the magnitude of the harm done to park system resources, and where imposing liability would serve no purpose whatsoever.

Subsection (c) directs the Secretary to pursue civil actions against those persons who may be liable under section 201 to recover response costs and damages. The Committee intends that where a person has undertaken an activity that has necessitated a response action or that has caused damage, then the Secretary shall commence an action under this section unless, in the opinion of the Secretary, one or more of the defenses outlined in paragraph (3) clearly applies.

The authority to recover response costs and damages under this section—cost recovery—is intended to complement the injunctive authority in section 202 of this Act, which authorizes the Secretary to compel the culpable party to undertake the response or appropriate remedial action directly. Both serve the same function of minimizing damage to park resources in the first place and remedying the damage that does occur.

Subsection (c)(2) also specifies the venue for a civil action under title II of this Act.

Subsection (d) governs how the recovered funds are to be used. First, the subsection provides that the Secretary shall retain the funds in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA). That section requires that funds recovered pursuant to a cost recovery action under CERCLA be set aside in a separate account and used, without further appropriation, to remedy the damaged resources and in certain circumstances, to finance other national park management activities. It is the Committee's intent that this same procedure govern the use of funds recovered under section 201.

The Committee notes that section 107(f)(1) of CERCLA also contains other provisions relating to recovery of resources under the jurisdiction of state trustee under CERCLA which are not relevant to section 201 of this Act. The Committee does not intend by this reference to incorporate these other non-germane provisions of section 107(f)(1) into the requirements of section 201(d) of this Act.

Subsection (e)(1) provides a set aside of up to \$1,000,000 for use by the Secretary of the Interior, without further appropriations, to finance response actions and damage assessments by the Secretary. After an initial deposit of funds from a cost recovery action, this set-aside is to be maintained at a level of \$1 million by subsequent deposits of monies received in damage actions so that a constant source of funds is immediately available for response actions and damage assessments. One serious limitation of the existing cost recovery approach is the inability of the Secretary to finance, in the first place, the assessments of damages out of base program funds, since those funds are typically dedicated for other purposes that must be postponed if the money is diverted to assessments. Without the assessments, however there may, as a practical matter, be no recovery since the damage assessments provide the technical foundations for recovery actions. To avoid this problem, the legislation authorizes the use of a portion of the recovered funds to finance response and damage assessments.

Subsection (e)(2) details the use of the remaining funds that are recovered pursuant to a cost-recovery action. Since the fundamental purpose of section 201 of this Act is to restore the natural resources of a national park that are destroyed, injured or otherwise lost, the first priority for the use of the funds is to restore, replace or acquire the equivalent of the damaged resources.

Where, however, the entire amount of the funds remaining after the operation of paragraph (1) cannot be used to restore or replace the damage sanctuary resources, then paragraph (2)(B) authorizes the Secretary of the Interior to use the funds for managing and improving the national park or the park system resources that were

the subject of the action and then, as a third option, to manage other high priority parks in need of additional funding.

SECTION 202. INJUNCTIVE RELIEF

Section 202 authorizes the Secretary to pursue injunctive relief in Federal district court to abate actual harm or the threat of harm to a park resource. This authority is concurrent with the Secretary's responsibilities to conduct recovery and response actions under Section 201 of this title.

TITLE III—ABANDONED SHIPWRECKS LOCATED IN NATIONAL MARINE SANCTUARIES

SECTION 301. MANAGEMENT OF ABANDONED SHIPWRECKS LOCATED IN NATIONAL MARINE SANCTUARIES

Section 301 contains an amendment to section 6 of the Abandoned Shipwreck Act of 1987 (P.L. 100-298) to clarify that the Abandoned Shipwreck Act of 1987 does not affect the management, by the Secretary of Commerce, of abandoned shipwrecks located within the boundaries of any national marine sanctuary established under title III. This amendment does not alter or preclude any transfer of title to these shipwrecks which may otherwise be required pursuant to section 6(c) of Public Law 100-298. The intent of this section is to ensure that historic shipwrecks located within national marine sanctuaries are protected, for example, where a state with title to the wreck desires to prevent salvage. In this case, the Secretary would have the authority to regulate the manner of salvage to protect both the wreck and the other sanctuary resources. The Committee understands that this authority will have to be administered compatibly and cooperatively with state title over historic shipwrecks in many instances.

INFLATIONARY IMPACT STATEMENT

Pursuant to the requirements of clause (2)(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 4208 will have no inflationary impact upon prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated cost to the United States which would be incurred in carrying out H.R. 4208. However, under paragraph (d) of Clause 7, the provisions of clause 7(a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of Clause (2)(1)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 4208 have been made by the Committee during the 100th Congress.

(2) With respect to the requirement of clause (2)(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 4208 does not contain any new tax exemptions. The bill does provide for new budget authority which is outlined in the report of the Congressional Budget Office.

(3) With respect to the requirement of clause (2)(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no reports from the Committee on Government Operations on the subject of H.R. 4208.

(4) With respect to the requirement of clause (2)(1)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of H.R. 4208 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4208, the National Marine Sanctuaries Program Authorization Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4208.
2. Bill title: The National Marine Sanctuaries Program Authorization Act of 1988.
3. Bill status: As ordered by the House Committee on Merchant Marine and Fisheries, June 14, 1987.
4. Bill purpose: Title I of H.R. 4208 would reauthorize marine sanctuary programs administered by the National Oceanic and Atmospheric Administration (NOAA). Title I would also make several amendments to the marine sanctuaries act affecting the administration of sanctuaries and establishing new sources of funds for these programs. The new funding sources would include:

Special use permits.—Title I would authorize NOAA to establish a special use permit program for commercial operations—such as glass bottom boats and diving trips—in sanctuaries. NOAA would be authorized to charge a fee for the permits; the fee would be set to recover administrative costs and the “fair market value” of the permit.

Damages collections.—Under current law, the amounts recovered for damages to marine sanctuaries and deposited in the general fund of the Treasury. H.R. 4208 would make the amounts recovered available without appropriation to NOAA for restoration of the sanctuary and reimbursement for cleanup costs.

Civil penalties.—The bill would make all civil penalties recovered under the sanctuaries act available without appropriations to NOAA. Under current law, civil penalties for marine sanctuary offenses are classified as miscellaneous receipts and deposited in the general fund of the Treasury.

Title I would also authorize the appropriation of \$4.25 million for 1989, \$4.9 for 1990, \$5.55 million for 1991, and \$5.95 million for 1992, to NOAA for sanctuary act programs.

Title II of H.R. 4208 would authorize the National Park Service to use funds recovered for damages following procedures similar to the ones described above.

Title III would amend the Abandoned Shipwrecks Act of 1987 to require that abandoned shipwrecks located in marine sanctuaries remain under NOAA's management.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorizations of appropriations:					
Authorization level.....	4.3	4.9	5.6	6.0
Estimated outlays.....	2.9	4.4	5.2	5.8	1.9
Direct spending:					
Estimated budget authority.....	.6	.1	.2	.4	.4
Estimated outlays.....	.4	.3	.2	.4	.4
Total:					
Authorization level/budget authority.....	4.9	5.0	5.8	6.4	.4
Estimated outlays.....	3.3	4.7	5.4	6.2	2.3

The costs of this bill fall within budget function 300. This table does not include spending of any collections resulting from future damage settlements, which CBO cannot estimate. Such amounts are not likely to be substantial.

Basis of estimate: The costs shown in the table above would result entirely from enacting Title I of the bill. For the authorizations of appropriations, this estimate assumes that the full amounts authorized would be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns.

The estimated direct spending effect is based on information provided by NOAA. The budget authority shown in the table above results from collections of damages and civil penalties. Estimated collections resulting from special use permit fees are not shown in the table because they would be offset by higher spending and, therefore, would have no net effect on the budget.

Because the provisions of the bill regarding damage collections would cover all damages collected after November 30, 1986, two cases that have already settled would be affected. These cases involved two vessels, the *Wellwood* and the *Puerto Rican*, that damaged marine sanctuaries in Florida and California, respectively. The settlements with the federal government have totalled \$8 million. Of this total, NOAA would have the authority to spend \$6.3 million if this bill were enacted.

The owners of the *Puerto Rican* settled with the federal government for \$1.7 million in 1987. NOAA's share of this total would be

\$618,416, which would cover cleanup costs, damages, and civil penalties. If the bill were enacted, this amount would be transferred from the Treasury to NOAA and be available for obligation.

The owners of the *Wellwood* settled for \$6.3 million in 1986, payable at graduated amounts over 15 years. NOAA would receive \$5.6 million of this total, which includes \$1.2 in civil penalties and \$4.4 million for damages and restoration costs. Payments to NOAA would not begin until 1990, because the first \$620,000 of the settlement will reimburse the Coast Guard for towing costs.

CBO cannot estimate the effect of future settlements of damage cases involving marine sanctuaries (covered by Title I) or National Park System resources (covered by Title II), because these events are infrequent and unpredictable. As with the existing settlements, however, the amounts recovered in any settlement would reflect costs of clean-up and repair, damages, and civil penalties. Spending from the recovered amounts is not likely to be substantial.

We expect that collections from the special use permits would cover administrative costs, and bring in some additional amount, possibly around \$1 million to \$2 million annually, depending on the structure and amount of the fee. The fees would have no net effect on the federal budget, however, because all collections would be spent on marine sanctuary programs.

The reclassification of receipts from civil penalties would not affect the amounts collected, but would increase federal outlays because the amounts collected would be available to NOAA. The money involved is not significant, however. Aside from the substantial collections associated with the *Wellwood* and *Puerto Rican* settlements, penalties associated with the sanctuaries act have averaged around \$20,000 annually in recent years.

Based on information provided by NOAA, we expect that enacting Title III would not have a significant effect on the federal budget.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

Departmental Reports were requested from the Department of Commerce and the Department of the Interior. The following reports were received by the Committee from the Department of Commerce and Department of Justice.

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,

Washington, DC, June 7, 1988.

Hon. WALTER B. JONES,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter provides the views of the Department of Commerce on H.R. 4208, the "National Marine Sanctu-

aries Program Authorization Act of 1988," as amended May 24, 1988, by two Subcommittees of the House Committee on Merchant Marine and Fisheries.

Although there are portions of H.R. 4208 which we consider favorably, the Department of Commerce opposes the bill unless it is amended as set out more fully below.

Section 2 of the bill would amend Section 304 of the MPRSA to modify the sanctuary designation process by reducing the length of the process to two and one-half years. DOC opposes this section as unworkable on the basis that sanctuary designation has been shown to require an average of about four years to allow time to meet requirements of the MPRSA, the National Environmental Policy Act, and the regulatory review process.

Subsection 3(a) of the bill adds new sections numbered 309 through 313 to the MPRSA, on promotion and coordination of research; special use permits; injury to destruction or loss of sanctuary resources; and acceptance of donations. Subsection 3(b) authorizes the Secretary of Commerce to enter into cooperative agreements with nonprofit organizations to carry out certain purposes of the MPRSA. Subsection 3(c) requires the Secretary to report annually to Congress, starting not later than 12 months after the bill's enactment, on DOC activities related to implementing the amendments made by section 3.

DOC supports new sections 309, 312 and 313, and the cooperative agreement authority provided by subsection 3(b) of the bill. As to the new section 310, on special use permits, DOC recommends revising subsection (f) to read "Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities not regulated by the site specific regulations of a national marine sanctuary."

The purpose of this change is to ensure that sanctuary regulations on fishing are not overturned by the amendment. DOC also recommends that it be made clear, either in section 310 itself or in the bill's legislative history, that regulatory permits may continue to be issued.

DOC strongly supports the purpose of new section 311 to the extent it permits the Government, in the event of injury, destruction, or loss to marine sanctuary resources, to recover the value of the damage to the resources from the responsible parties. However, the exception from liability contained in subsection 311(a)(3)(B) which exempts all activities "authorized by Federal or State law" is too broad since virtually all activity that might cause damage—navigation, fishing, diving—are generally authorized by law unless specifically prohibited. We recommend revising this exemption to read "(B) the injury or destruction of the sanctuary resource was specifically authorized by Federal law." We do not believe that States should have the ability to authorize destruction of sanctuary resources that are located in the exclusive economic zone and have therefore omitted that possibility in the suggested revision. Also, we oppose using recovered funds for sanctuary management purposes because this bypasses the normal authorization and appropriation process. In addition, section 311 should be amended to provide for the deposit into the general fund of the Treasury amounts received as civil penalties which are in excess of reasonable costs.

The Department of Commerce opposes both sections 4 and 5 as fundamentally inconsistent with the existing designation process, which is working well and should not be overridden. Section 4 requires the Secretary of Commerce to designate three sites as marine sanctuaries. Of these sites, one was removed as a candidate for designation because two other sanctuaries in the area protect similar resources and the large size of the proposed sanctuary would not produce benefits of sufficient value relative to the cost to administer it. The remaining sites under section 4 are already active candidates. Thus, requiring designation in this bill is unnecessary.

Section 5 of the bill identifies specific areas to be studied for possible designation as marine sanctuaries. Some of the areas identified are not on the Sanctuary Site Evaluation List (SEL). The appropriate time to consider sites for inclusion on the SEL is during the public comment period. We plan to initiate such a comment period shortly. If these sites warrant further study, they will be identified and the sites' resources will be subjected to scientific assessment.

Section 7 would authorize appropriations for fiscal years 1989 through 1992, at levels which exceed those proposed by DOC. DOC supports reauthorization at a level of \$2.325 million for FY 1989 and such sums as may be necessary for FY 1990.

Section 101 of the bill would amend section 307 of the MPRSA to authorize seeking equitable relief whenever the Secretary determines that there may be an imminent risk to the resources of a national marine sanctuary. DOC supports this section.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress from the standpoint of the Administration program.

Sincerely,

ROBERT H. BRUMLEY.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, June 7, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR CHAIRMAN JONES: This letter conveys the comments of the Department of Justice on H.R. 4208, the National Marine Sanctuaries Program Authorization Act of 1988, as well as on amendments to be proposed by Congressman Studds to that bill.

1. Comments on H.R. 4208: The Department has several comments on section 6, the enforcement section of the bill. Our primary concern with these provisions is that there be relative uniformity among the federal environmental laws on the same issues. For this reason, we urge the Committee to amend section 6(a) to conform with provisions of the Magnuson Act as follows: the amendment to Section 307(c)(3) of the Marine Protection, Research and Sanctuaries Act (MPRSA), on in rem proceedings, should conform with the Magnuson Act, 16 U.S.C. § 1858(d); the amendment

to 307(g), on jurisdiction, should conform with 16 U.S.C. § 1861(d); and the amendment to section 307(b)(1)(C), on seizure, should conform with 16 U.S.C. § 1861(b)(1)(A)(v) (evidence "related to any" violation). In addition, we suggest that the Committee add a provision allowing for the payment of a bond to retain custody of seized property, which is consistent with other laws, see 16 U.S.C. § 1860(d)(1), and adds flexibility in appropriate circumstances where it would be burdensome for the government to retain possession of the property. Finally, the amendment to section 307(c)(4), which provides for service of complaints on the Secretary or United States Attorney, should also include service on the Attorney General of the United States.

2. Comments on Amendments by Congressman Studds: As a preliminary matter, in the absence of any statement of purpose, the objective of the amendments is not clear. From the text, it is possible that the concerns addressed in these amendments may be protected by current law, including section 311 of the Clean Water Act, 33 U.S.C. § 1321 (Oil and Hazardous Substance Liability) and the Comprehensive Emergency Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. § 9601 et seq. If the objective of the amendments is to address problems not adequately covered by these and other statutes, that purpose should be stated; if not, the amendments may be unnecessary. In addition to this general statement, we offer the following, more technical, suggestions and comments.

As noted above, there may be other laws which generally provide authority to address the risks which are the object of the amendments; therefore, we suggest that the phrase "Notwithstanding any other provision of law" be inserted at the beginning of section 101 amending section 307(j).

Many of the amendments appear to be based, at least in part, on the provisions of CERCLA. In the interest of consistency, as well as preserving the current program under that statute, we suggest that certain provisions in these amendments be changed either to conform with or be distinguished from CERCLA. Thus, we recommend that section 102, amending section 311(a)(1), be amended to conform with CERCLA, through the following changes ". . . any person or vessel who [destroys or causes] *contributes to* the loss of or injury to any sanctuary . . ." It should also be made clear either in the statute or in its legislative history that liability shall be joint and several where the harm is indivisible. We also suggest that the amendment to 311(a)(3) should be changed as follows to conform with section 107(b)(3) of CERCLA,

311(a)(3) . . . an act of war, an act or omission of a third person [if the person or vessel acted with due care] *other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant, if the defendant establishes by a preponderance of the evidence that (a) he exercised due care taking into consideration all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of*

any such third party and the consequences that could foreseeably result from such acts or omissions.

Section 311(c)(2) should be amended to provide for nationwide service of process, see CERCLA section 113(b). Finally, with respect to conformity, we observe that the amendments distinguish between response costs, damage assessments and restoration funds. It appears that response costs under the amendments is not intended to be the same as under CERCLA. Therefore, to clarify the distinction, we suggest that the term "short term response" costs be used instead and that "short term response costs" be defined.

The section amending 311(c)(1) states that the Secretary shall commence a civil action for recovery of response costs and damages. Since the authority to sue in district court lies only with the Attorney General, see 5 U.S.C. § 901 and Executive Order 6166 at section 5, the following underlined amendment should be made: **[shall] may request the Attorney General to** commence a civil action in the *appropriate* United States district court **[for the appropriate district court].**" Similar amendments should be made to section 101, adding new section 307(j) ("the Secretary may **[require]** request the Attorney General of the United States to secure such relief"); section 201(c)(a) (same as 311(c)(1)); and 202 (same as 101). For the same reason, the proposed amendment to section 307(c)(6), which authorizes the Secretary to compromise a civil penalty, should provide for the concurrence of the Attorney General of the United States.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

THOMAS M. BOYD,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW

If this bill is enacted, it will make the following changes in existing statutory law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

* * * * *

TITLE III—NATIONAL MARINE SANCTUARIES

* * * * *

SEC. 302. DEFINITIONS.

As used in this title, the term—

(1) "draft management plan" means the plan described in section 304(a)(1)(E);

(2) "Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

(4) "Secretary" means the Secretary of Commerce; [and]

(5) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States[.]; and

(6) "damages" includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

(B) the cost of damage assessments under section 312(b)(2);

(7) "response costs" means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury; and

(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.

SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) * * *

(b) TAKING EFFECT OF DESIGNATIONS.—

[(1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

[(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

[(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.]

(1) NOTICE OF DESIGNATION.—(A) Subject to subparagraph (B), not later than 120 days after the last day of the period specified in subsection (a)(6), the Secretary shall—

(i) publish in the Federal Register—

(I) notice of the designation of a national marine sanctuary, with final regulations to implement the designation, and any other matters required by law; and

(II) notice of the availability to the public in the final management plan and final environmental impact statement relating to such sanctuary; and

(ii) submit such notice of designation to the Congress;

unless the Secretary determines, based upon the Congressional report described in subsection (a)(6), comments upon the draft environmental impact statement, or other relevant information, not to proceed with the designation.

(B) The Secretary may publish and submit a notice of designation in accordance with subparagraph (A) not later than 150 days after the last day of the period specified in subsection (a)(6) if—

(i) the Secretary determines that additional time is required for analysis of and response to public comments relating to such designation; and

(ii) the Secretary notifies the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(C) A determination of the Secretary not to proceed with the designation of a national marine sanctuary—

(i) shall be made in writing, setting forth in detail the basis for the Secretary's decision; and

(ii) shall be submitted to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate.

(D) The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published.

(2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that actions taken under paragraph [(1)](5) (A) or (B) will affect the designation of a national marine sanctuary in a

manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph [(1)](5) (A) or not certified under paragraph [(1)](5) (B) shall take effect.

* * * * *

(5) *TAKING EFFECT OF DESIGNATION.*—The designation of a national marine sanctuary (including terms of the designation which are not disapproved under this subsection) and regulations implementing such designation shall take effect after a period of 45 days of continuous session of Congress beginning on the day on which such notice is published pursuant to paragraph (1), unless—

(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

(B) in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor of the State certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms, as applicable, shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

* * * * *

[SEC. 307. ENFORCEMENT.]

[(a) *IN GENERAL.*—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

[(b) *CIVIL PENALTIES.*—

[(1) *CIVIL PENALTY.*—Any person subject to the jurisdiction of the United States who violates any regulation issued under this title shall be liable to the United States for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

[(2) *NOTICE.*—No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

[(3) *IN REM JURISDICTION.*—A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

[(C) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on the Attorney General's own initiative or at the request of the Secretary.]

SEC. 307. ENFORCEMENT.

(a) *IN GENERAL.*—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.

(b) *POWERS OF AUTHORIZED OFFICERS.*—Any person who is authorized to enforce this title may—

(1) *with or without a warrant or other process—*

(A) *board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;*

(B) *seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;*

(C) *seize any evidence of a violation of this title or of any regulation or permit issued under this title;*

(2) *execute any warrant or other process issued by any court of competent jurisdiction; and*

(3) *exercise any other lawful authority.*

(c) *CIVIL PENALTIES.*—

(1) *CIVIL PENALTY.*—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) *NOTICE.*—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) *IN REM JURISDICTION.*—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction.

(4) *REVIEW OF CIVIL PENALTY.*—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order and simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. Upon being served such a complaint, the Secretary shall promptly file in such court in accordance with section 2112 of title 28, United States Code, a certified copy of the record upon which the violation relating to such complaint was found or such penalty imposed. The findings and order of the Secretary shall be set aside by such court if they are not found to be sup-

ported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(5) **COLLECTION OF PENALTIES.**—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(d) **FORFEITURE.**—

(1) **IN GENERAL.**—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection.

(2) **APPLICATION OF THE CUSTOMS LAWS.**—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

(3) **DISPOSAL OF SANCTUARY RESOURCES.**—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) **PRESUMPTION.**—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

(e) **PAYMENT OF STORAGE, CARE, AND OTHER COSTS.**—

(1) **IN GENERAL.**—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

(B) a record to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeit-

ure of property, for a violation of this title or of any regulation or permit issued under this title.

(2) **LIABILITY FOR COSTS.**—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(f) **SUBPOENAS.**—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order may be punished by such court as contempt.

(g) **JURISDICTION.**—The district courts of the United States shall have jurisdiction to restrain a violation of this title and regulations and permits issued under this title, and to grant such other relief as may be appropriate.

(h) **USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.**—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(i) **COAST GUARD AUTHORITY NOT LIMITED.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

(j) **INJUNCTIVE RELIEF.**—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 312, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

[SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

[To carry out this title, there are authorized to be appropriated:

[(1) \$3,000,000 for fiscal year 1985.

[(2) \$3,300,000 for fiscal year 1986.

[(3) \$3,600,000 for fiscal year 1987.

[(4) \$3,900,000 for fiscal year 1988.]

SEC. [309] 308 SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 309. PROMOTION AND COORDINATION OF RESEARCH.

The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

- (1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and*
- (2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries of marine research.*

SEC. 310. SPECIAL USE PERMITS.

(a) ISSUANCE OF PERMITS.—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

- (1) to establish conditions of access to and use of any sanctuary resource; or*
- (2) to promote public use and understanding of a sanctuary resource.*

(b) PERMIT TERMS.—A permit issued under this section—

- (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;*
- (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;*
- (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and*
- (4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.*

(c) FEES.—

(1) ASSESSMENT AND COLLECTION.—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) AMOUNT.—The amount of a fee under this subsection shall be equal to the sum of—

- (A) costs incurred by the Secretary in issuing the permit;*
- (B) costs incurred by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and*
- (C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.*

(3) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

(A) for issuing and administering permits under this section; and

(B) for expenses of designating and managing national marine sanctuaries.

(d) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

(2) assess a civil penalty in accordance with section 307; or

(3) both.

(e) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(f) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

(g) REPORT.—The Secretary of Commerce shall submit an annual report to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate which describes activities of the Secretary in implementing this section. The Secretary shall submit the first report under this subsection not later than 12 months after the date of the enactment of this section.

SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

(a) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with any nonprofit organization—

(1) To aid and promote interpretive, historical, scientific, and educational activities; and

(2) for the solicitation of private donations for the support of such activities.

(b) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title.

SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) LIABILITY.—

(1) IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

(2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

(3) DEFENSES.—A person is not liable under this subsection if—

(A) that person can establish by a preponderance of the evidence that the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and that the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was of a de minimis nature.

(b) RESPONSE ACTION AND DAMAGE ASSESSMENT.—

(1) **RESPONSE ACTIONS.**—The Secretary may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) **DAMAGE ASSESSMENT.**—The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

(c) CIVIL ACTIONS.—

(1) **RECOVERY OF RESPONSE COSTS AND DAMAGES.**—The Secretary, acting as trustee for sanctuary resources on behalf of the United States, shall commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) for response costs and damages.

(2) **VENUE.**—Venue for an action under this section lies—

(A) in any district in which the defendant resides or may be found;

(B) in any district in which is located the defendant's principal place of business;

(C) in the district nearest to the national marine sanctuary; and

(D) in the case of an in rem action, in any district having jurisdiction over the vessel.

(d) **USE OF RECOVERED AMOUNTS.**—Response costs and damages recovered by the Secretary under this section and civil penalties under section 307 shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

(1) **RESPONSE COSTS AND DAMAGE ASSESSMENTS.**—Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

(2) **RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.**—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

(B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

(C) to manage and improve any other national marine sanctuary.

(3) **USE OF CIVIL PENALTIES.**—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraphs (2)(B) and (C) of this subsection.

(4) **FEDERAL-STATE COORDINATION.**—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A)

and (B) in accordance with an agreement entered into by the Secretary and the Governor of that State.

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this title the following:

(1) **GENERAL ADMINISTRATION.**—For general administration of this title—

- (A) \$1,800,000 for fiscal year 1989;
- (B) \$1,900,000 for fiscal year 1990;
- (C) \$2,000,000 for fiscal year 1991; and
- (D) \$2,100,000 for fiscal year 1992.

(2) **MANAGEMENT OF SANCTUARIES.**—For management of national marine sanctuaries designated under this title—

- (A) \$2,000,000 for fiscal year 1989;
- (B) \$2,500,000 for fiscal year 1990;
- (C) \$3,000,000 for fiscal year 1991; and
- (D) \$3,250,000 for fiscal year 1992.

(3) **SITE REVIEW AND ANALYSIS.**—For review and analysis of sites for designation under this title as national marine sanctuaries—

- (A) \$450,000 for fiscal year 1989;
- (B) \$500,000 for fiscal year 1990;
- (C) \$550,000 for fiscal year 1991; and
- (D) \$600,000 for fiscal year 1992.

SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS.

(a) **CONGRESSIONAL POLICY.**—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

(b) **INTERPRETATION AND DISPLAY OF ARTIFACTS.**—

(1) **SUBMISSION OF PLAN.**—The Secretary shall, within six months after the date of the enactment of this section, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

(2) **CONTENTS OF PLAN.**—The plan submitted under subsection (a) shall, at a minimum, contain—

(A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;

(B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;

(C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and

(D) a draft cooperative agreement with the State of North Carolina to implement the plan.